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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL., PETITIONERS,

vs.

HALDRED OVERSTREET.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED AUGUST 28, 1965
CERTIORARI GRANTED DECEMBER 6, 1965

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[fol. 1]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

STATE OF GEORGIA

State of Georgia
County of Chatham

PETITION—Filed June 22, 1962

The petition of Haldred Overstreet, respectfully shows:

1. Plaintiff is engaged in the operation of a retail grocery at 1601 Montgomery Street in Savannah, Chatham County, Georgia.

2. The defendants herein are the National Association for the Advancement of Colored People, a New York corporation doing business in Georgia; the Georgia State Conference of Branches, National Association for the Advancement of Colored People, an affiliate of the National Association for the Advancement of Colored People which is a New York corporation doing business in Georgia and which is also styled as the Georgia Chapter of the National Association for the Advancement of Colored People; the Savannah Branch, National Association for the Advancement of Colored People, being an affiliate of the National Association for the Advancement of Colored People, a New York corporation doing business in Georgia, said defendant corporations having a place of business in Chatham County, Georgia; W. W. Law, individually and as president of the Georgia and Savannah affiliates of the defendant corporations and who is an agent in Chatham County, Georgia, for the defendant corporations, and Rev. F. D. Jaudon, individually and as vice-president of the Georgia and Savannah affiliates of the defendant corporations and who is an agent in Chatham County, Georgia, for the defendant corporations. The individual defendants are residents of Chatham County, Georgia.

3. Defendants are subject to the jurisdiction of this court.

4. This suit for injunction and damages is brought against the above-named defendants individually and jointly and as a representative of the classes composed of all the members of the National Association for the Advancement of Colored People and against others similarly situated and is brought as a class suit in equity as the law provides in such cases. The said named defendants herein set out are suitable and proper persons to represent such classes. The unnamed defendants constituting the class are too [fol. 2] numerous to include in this lawsuit, but they have been acting in concert with the defendants in the activities hereinafter described and have been acting in conspiracy with and under the direction of the defendants, and particularly under the direction of the individual defendant, W. W. Law.

5. This complaint is brought against said defendants for temporary and permanent injunction and restraining order, and compensatory damages and punitive damages, to prevent defendants from picketing and conspiring to picket the store of the plaintiff and conspiring to induce any persons to boycott the plaintiff's store, and to recover the damages for the injuries incurred by the plaintiff as a natural consequence of defendants tortious and unlawful acts, as more particularly hereinafter set forth.

6. That on May 30, 1962, a fourteen (14) year old colored boy named Robert Lee Bolden was employed by plaintiff in his grocery store. Having been informed by two of his clerks that said boy had taken some grocery items from the store without permission, plaintiff called the boy to him and admonished him about taking the articles without permission and subsequently, on the same day, discharged the boy from his employment. About two hours after said discharge the boy returned to plaintiff's store along with some police officers and accused the plaintiff of having beaten him. Later the same day, the aunt of said colored boy took out a warrant against plaintiff for assault and battery. Upon going to the police barracks and putting

up bond, plaintiff charged said boy with larceny from his store.

7. On May 31, 1962, at 8:00 P.M. at the St. Phillips Monumental Church on Park Avenue and Jefferson Street where defendant Jaudon is pastor, there was a mass meeting of the Savannah Branch of the National Association for the Advancement of Colored People, called pursuant to circulars distributed to members during that day calling for a meeting to protest the alleged "beating of a fourteen (14) year old negro boy by the owner of the Tropical Market". Present at and leading the meeting were the defendants Law and Jaudon. At this meeting the defendants organized [fol. 3] what they refer to as a "selective buying" campaign to begin the following day and called for pickets to assemble at plaintiff's place of business.

9. That on the day following the meeting of the N.A.A.C.P., the defendants caused pickets to be placed adjacent to the plaintiff's place of business located at 1601 Montgomery Street, Savannah, Georgia, which pickets commenced stopping customers and prospective customers of plaintiff who were on the way to plaintiff's store to trade and made accusations to such persons to the effect that the plaintiff had beat up the fourteen (14) year old negro boy and that such customer or prospective customer should not thereafter trade with the plaintiff. That said picketing consisted of having a large number of people in and around the premises of the plaintiff to prevent the public from entering the business of the plaintiff in order to accomplish the unlawful purpose and objective of defendants of putting the plaintiff out of business by preventing any trade with him. That said picketing has commenced from May 31, 1962 until the present date and said pickets are still carrying on the same acts adjacent to plaintiff's business.

10. Plaintiff believes in his inherent right to carry on a legitimate business for which he has been licensed by the City of Savannah and to carry on such business free

of the coercive and intimidating influences brought upon his customers and prospective customers by defendants and their agents.

11. That said pickets are intimidating all persons approaching said store from going on the premises of the plaintiff and thereby preventing him from engaging in his lawful business of selling and disposing of goods, wares and merchandise, and that these acts by defendants are in violation of the laws of Georgia.

[fol. 4] 12. The defendants have encouraged and are inducing the public to boycott the plaintiff's business in order to accomplish their unlawful purpose of seeking to destroy the mutual confidence existing between the plaintiff and his customers and employees and seeking to put him out of business by alienating his customers.

13. That the plaintiff has engaged in the operation of an open air retail grocery store at the aforesaid location for a period of approximately sixteen (16) years and has created good will and good faith in the course of his business with the public, which is an invaluable asset.

14. That the defendant W. W. Law has been the leader of said pickets and has been instrumental in placing said pickets adjacent to the business and in advising them what hours to picket and what method of approach to take in talking to plaintiff's customers and prospective customers in order to alienate said customers from trading with plaintiff.

15. That said picketing consists of mass picketing in that numbers of pickets gathered around the premises of the plaintiff, obstructing and interfering with the use of the public sidewalks and streets and the entrance to the plaintiff's business. That said mass picketing was a part of the conspiracy of the defendants to intimidate customers from entering the plaintiff's store and to force, intimidate and coerce the plaintiff into going out of business. That

all sorts of false and spurious accusations have been made against plaintiff by said defendants both before and after the trial of plaintiff in the Recorder's Court of the City of Savannah.

16. That the pickets are harassing and intimidating customers from going on the premises of the plaintiff by creating an atmosphere around plaintiff's premises of possible violence, by stopping every customer as they approach plaintiff's store, by having large numbers of pickets in and around plaintiff's premises, by inciting and inflaming customers and the public by false and misleading statements regarding conduct of the plaintiff, all of which are causing plaintiff's customers to be fearful of trading in plaintiff's store, and are thereby preventing plaintiff from [fol. 5] engaging in his lawful business of selling and disposing of goods, wares and merchandise in violation of the laws of Georgia.

17. That said pickets have threatened physical harm to the employees of plaintiff in an attempt to force them to quit the employment of plaintiff, in violation of Section 54-801 of the Code of Georgia (Georgia Laws 1947, Page 620).

18. That the defendants had full knowledge that their actions would cause irreparable damage to the plaintiff's good will and said actions of defendants were intentional, willful and for the purpose of causing damage to the plaintiff and putting him out of business. All of the aforesaid acts on the part of the defendants constitute a general scheme and conspiracy on their part to force and intimidate the plaintiff to go out of business and to hinder him from engaging in his proper and lawful business activity.

19. That as a result of the foregoing acts of the defendants the plaintiff is incurring a loss in sales each day and continues to incur said loss and the extent of his damages are not now known. Plaintiff reserves the right to amend this petition when the same is known.

20. Continuance of the picketing is causing and will cause plaintiff irreparable damage and plaintiff has no adequate remedy at law. That said continued unlawful picketing and boycotting by the defendants will cause great and irreparable damages to the plaintiff's good will in an amount and nature as is incapable of ascertainment in monetary terms and would lead to a closing of plaintiff's store to the great damage of plaintiff.

21. Plaintiff alleges that neither individual defendants nor any of their officers, agents, members, representatives nor anyone acting in concert with them, is or claims to be or have been an employee or representative of any employee of plaintiff and there is not and has not been any labor dispute between the plaintiff and any of his present employees.

22. That plaintiff has not conducted his business in any manner to discriminate against any of the individual defendants, or any of the corporate defendants, or their members.

23. Plaintiff alleges that the establishment of picket lines [fol. 6] and the maintaining of a boycott of his store in order to put him out of business because of the false accusations against him is an infringement upon his right to do business and seeks to impair and destroy his business.

Wherefore, the plaintiff prays:

(A) That defendants, their associates, conspirators and confederates and all persons aiding and abetting said defendants, including among others all members of the National Association for the Advancement of Colored People, W. W. Law, individually and as president of the Georgia Chapter and the Savannah Chapter of the said association, be temporarily restrained and permanently enjoined from picketing or maintaining pickets in or about or near the plaintiff's place of business located at 1601 Montgomery Street, in Savannah, Chatham County, Georgia.

(B) That said defendants be enjoined from conspiring to induce any person or persons to boycott or not trade at the plaintiff's place of business or hinder or disrupt the orderly lawful business activities of the plaintiff by threats, violence, intimidation or other unlawful means.

(C) That defendants be enjoined from threatening the employees of plaintiff in an attempt to get them to quit their employment.

(D) That plaintiff be awarded judgment in the sum of One Hundred Thousand Dollars for exemplary or punitive damages as the result of the foregoing willful and malicious acts of said defendants.

(E) That plaintiff be awarded damages resulting from the loss of sales as they may be determined.

(F) That said defendants be enjoined from inducing others to engage in economic boycott of the plaintiff's business.

(G) That said defendants be enjoined from interfering with customers of plaintiff's business.

(H) That plaintiff have such other and further relief as may be equitable and just, and

(I) That process issue, directed to the defendants requiring them to answer said plaintiff upon the merits of this his complaint.

Dickey, Futrell and Barker, By: G. L. Dickey, Attorneys for Petitioner.

[fol. 7] *Duly sworn to by Haldred Overstreet, jurat omitted in printing.*

[fol. 8]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

TEMPORARY RESTRAINING ORDER AND RULE TO SHOW CAUSE—June 22, 1962

The within and foregoing petition read and considered, and sanctioned and ordered filed.

Let copies of the petition and order be served upon the defendants named therein. The court, subject to objections or demurrers, designates each of said individual defendants as representatives of the class composed of the National Association for the Advancement of Colored People.

The defendants, their associates, conspirators and confederates, and all persons aiding or abetting said defendants, until further order of this Court, are hereby temporarily restrained and enjoined from picketing or maintaining pickets in or about or near the place of business of the plaintiff located at 1601 Montgomery Street, Savannah, Chatham County, Georgia, and they are temporarily restrained and enjoined from conspiring to induce or inducing any person or persons to boycott or not to trade at the plaintiff's place of business or hinder or disrupt the orderly lawful business activities of the plaintiff by threats, violence, intimidation or other lawful (sic) means.

Let the defendants show cause before me at the Chatham County Courthouse at 10:00 o'clock A.M. on the 29 day of June, 1962, why the restraining order herein granted should not be continued until a final hearing on said case. Let the defendants be served with copies of this order and the foregoing petition instanter.

This 22 day of June, 1962.

B. B. Heery, Judge of Superior Court, Chatham County, Georgia.

[fol. 9]

SHERIFF'S OFFICE.

State of Georgia,)
County of Chatham,)

The undersigned Sheriff's deputies have served the within original Petition and Order upon the within named defendants, by serving each a copy of the said Petition and Order in the following manner as indicated:

Defendant.	Manner of Service.	Date.
W. W. Law, Individually a/a President of the Georgia and Savannah Affiliates of the N.A.A.C.P.	Personal (Appx. (7:00 P.M.) /s/ GEORGE KAPNER	6/22/1962.
The Savannah Branch, N.A.A.C.P.	W. W. Law, Pres. /s/ GEORGE KAPNER	6/22/1962.
The Georgia State Conference of Branches, N.A.A.C.P.	W. W. Law, Pres. /s/ GEORGE KAPNER	6/22/1962.
National Association for the Advancement of Colored People.	W. W. Law, Pres. /s/ GEORGE KAPNER	6/22/1962.
Rev, F. D. Jaudon, Individually a/a Vice President of the Georgia and Savannah Affiliates, N.A.A.C.P.	Personal /s/ FRED SCHOFER	6/25/1962.

[fol. 10]

State of Georgia
Chatham County

To the Sheriff of the County of Chatham or His Deputy—Greeting

Civil Action

HALDRED OVERSTREET,

vs.

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a New York corporation doing business in Georgia,

THE GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, an affiliate of the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, also styled as the GEORGIA CHAPTER OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

THE SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, an affiliate of the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

W. W. LAW, individually and as president of the GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and the SAVANNAH BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; and

REV. F. D. JAUDON, individually and as vice president of the SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE.

The defendants: the National Association for the Advancement of Colored People, a New York corporation

doing business in Georgia; the Georgia State Conference of Branches, National Association for the Advancement of Colored People, an affiliate of the National Association for the Advancement of Colored People, also styled as the Georgia Chapter of the National Association for the Advancement of Colored People; the Savannah Branch, National Association for the Advancement of Colored People, an affiliate of the National Association for the Advancement of Colored People; W. W. Law, individually and as President of the Georgia State Conference of Branches, National Association for the Advancement of Colored People and the Savannah Branch of the National Association for the Advancement of Colored People; and Rev. F. D. Jaudon, individually and as Vice President of the Savannah Branch, National Association for the Advancement of Colored People,

Are hereby required, personally, or by their attorney, to be and appear in the Superior Court at the courthouse in Savannah, Georgia, within thirty (30) days from the date [fol. 11] of service of this process upon you, then and there to answer the plaintiff on the merits of the foregoing petition; as in default of such appearance the said court will proceed as to justice shall appertain.

Witness, the Honorable B. B. Heery, Judge of said Superior Court, this 22 day of June, in the year of our Lord, One Thousand, Nine Hundred and Sixty-two (1962).

Dickey, Futrell and Barker, By: G. L. Dickey, Plaintiff's Attorney.

(Seal of Court)

P. R. Schreck, Dep. Clerk Superior Court, Chatham County, Georgia.

[File endorsement omitted]

[fol. 12]

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GA.

HALDRED OVERSTREET,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; W. W. LAW, and REV. F. D. JAUDON.

AMENDMENT OF PLAINTIFF'S PETITION—
Filed February 1, 1963

Now comes Haldred Overstreet, plaintiff in the above-captioned case, and, with leave of court first obtained, files this amendment to his petition, as follows:

1. By inserting between the words "the" and "Savannah" on the third line of Paragraph 7 of the original petition the words "National Association for the Advancement of Colored People and the"; and by adding to the sentence ending with the word "Jaudon" on the ninth line of Paragraph 7 the following, "defendant Law attending and acting in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation"; and by inserting between the words "defendants" and "organized" on the ninth line of Paragraph 7 the words "unlawfully, wantonly, willfully, and knowingly, and with malice aforethought and with the wickedly contrived intention of putting plaintiff out of business"; so that, as amended, Paragraph 7 will read as follows:

"7. On May 31, 1962, at 8:00 P.M. at the St. Phillips Monumental Church on Park Avenue and Jefferson Street

where defendant Jaudon is pastor, there was a mass meeting of the National Association for the Advancement of Colored People and the Savannah Branch of the National Association for the Advancement of Colored People, called pursuant to circulars distributed to members during that day calling for a meeting to protest the alleged "beating of a fourteen (14) year old Negro boy by the owner of the Tropical Market". Present at and leading the meeting were [fol. 13] the defendants Law and Jaudon, defendant Law attending and acting in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation. At this meeting the defendants unlawfully, wantonly, willfully, and knowingly, and with malice aforethought and with th wickedly contrived intention of putting plaintiff out of business organized what they refer to as a "selective buying" campaign to begin the following day and called for pickets to assemble at plaintiff's place of business."

2. By inserting between the words "defendants" and "caused" on the second line of Paragraph 9 of the original petition the words "unlawfully, wantonly, willfully, and knowingly, and with malice aforethought and with the wickedly contrived intention of damaging plaintiff and putting plaintiff out of business"; so that, as amended, Paragraph 9 will read as follows:

"9. That on the day following the meeting of the N.A.A.C.P., the defendants, unlawfully, wantonly, willfully, and knowingly, and with malice aforethought and with the wickedly contrived intention of damaging plaintiff and putting plaintiff out of business caused pickets to be placed adjacent to the plaintiff's place of business located at 1601 Montgomery Street, Savannah, Georgia, which pickets commenced stopping customers and prospective customers of plaintiff who were on the way to plaintiff's store to trade and made accusations to such persons to the effect that the

plaintiff had beat up the fourteen (14) year old Negro boy and that such customer or prospective customer should not thereafter trade with the plaintiff. That said picketing consisted of having a large number of people in and around the premises of the plaintiff to prevent the public from entering the business of the plaintiff in order to accomplish the unlawful purpose and objective of defendants of putting the plaintiff out of business by preventing any trade with him. That said picketing has commenced from May 31, 1962 until the present date and said pickets are still carrying on the same acts adjacent to plaintiff's business."

3. By adding to the end of Paragraph 12 of the original petition the following sentences: "That defendants maliciously and wantonly and with a reckless disregard of the [fol. 14] plaintiff's rights employed conduct and language intended to create a prejudice, sentiment or feeling against plaintiff deterring those from buying from him who had been doing so and inclined to continue doing so. That, at the time such picketing was commenced by defendants, more than two-thirds of plaintiff's customers were Negroes; that defendants were aware that a substantial portion of plaintiff's income was derived from Negro customers trading with him, and that the unlawful, wanton, wilful, and malicious conspiracy conducted by defendants was initiated and carried on with the malicious intent and purpose to damage him in the pursuit of his lawful enterprise"; so that, as amended, Paragraph 12 will read as follows:

"12. The defendants have encouraged and are inducing the public to boycott the plaintiff's business in order to accomplish their unlawful purpose of seeking to destroy the mutual confidence existing between the plaintiff and his customers and employees and seeking to put him out of business by alienating his customers. That defendants maliciously and wantonly and with a reckless disregard of the plaintiff's rights employed conduct and language intended to create a prejudice, sentiment or feeling against plaintiff deterring those from buying from him who had been doing

so and inclined to continue doing so. That, at the time such picketing was commenced by defendants, more than two-thirds of plaintiff's customers were Negroes; that defendants were aware that a substantial portion of plaintiff's income was derived from Negro customers trading with him, and that the unlawful, wanton, wilful, and malicious conspiracy conducted by defendants was initiated and carried on with the malicious intent and purpose to damage him in the pursuit of his lawful enterprise."

4. By adding to the end of Paragraph 14 of the original petition the following sentence: "That the defendant W. W. Law, in using such tactics, was acting in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation", so that, as amended, Paragraph 14 will read as follows:

[fol. 15] "14. That the defendant W. W. Law has been the leader of said pickets and has been instrumental in placing said pickets adjacent to the business and in advising them what hours to picket and what method of approach to take in talking to plaintiff's customers and prospective customers in order to alienate said customers from trading with plaintiff. That the defendant W. W. Law, in using such tactics, was acting in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation."

5. By inserting between the words "intentional" and "willful" on the third line of Paragraph 18 of the original petition the word "malicious"; by inserting between the words "general" and "scheme" on the sixth line of the original petition the word "malicious"; so that, as amended, Paragraph 18 will read as follows:

"18. That the defendants had full knowledge that their actions would cause irreparable damage to the plaintiff's

good will and said actions of defendants were intentional, malicious and willful and for the purpose of causing damage to the plaintiff and putting him out of business. All of the aforesaid acts on the part of the defendants constitute a general malicious scheme and conspiracy on their part to force and intimidate the plaintiff to go out of business and to hinder him from engaging in his proper and lawful business activity."

6. By striking from Paragraph 19 of the original petition the second sentence thereof and by adding to the end of said paragraph, as amended, the following: "Plaintiff shows that, for the period of five months immediately preceding said picketing, his gross income from the operation of his said business was $48,386.29, from which he realized a net profit of approximately $9,677.25, but that, for the period of five months immediately following the commencement of said picketing, his gross income from the operation of his said business was $18,251.99, from which he realized a net profit of approx. $3,650.39. That plaintiff's loss of gross income and resultant loss in net profit of approximately $6,026.86 during these five months was the direct result of and caused by the unlawful, wanton, wilful, and malicious acts of defendants as described in this petition. [fol. 16] Plaintiff reserves the right to amend this paragraph further at such time as he has determined his actual losses not covered by this amendment and also reserves the right to show the difference in the value of his business before and after the results of said picketing as soon as he can reach a determination of same. Plaintiff further shows that he has suffered damages to the good will in his business operation as a result of the said unlawful, wanton, wilful, and malicious acts of defendant in the amount of $50,000.00,"; so that, as amended, Paragraph 19 will read as follows:

"19. That as a result of the foregoing malicious acts of the defendants the plaintiff is incurring a loss in sales each day and continues to incur said loss and the extent of his damages are not now known. Plaintiff shows that, for

the period of five months immediately preceding said picketing, his gross income from the operation of his said business was $48,386.29, from which he realized a net profit of approximately $9,677.25, but that, for the period of five months immediately following the commencement of said picketing, his gross income from the operation of his said business was $18,251.99, from which he realized a net profit of approximately $3,650.39. That plaintiff's loss of gross income and resultant loss in net profit of approximately $6,026.86 during these five months was the direct result of and caused by the unlawful, wanton, wilful, and malicious acts of defendants as described in this petition. Plaintiff reserves the right to amend this paragraph further at such time as he has determined his actual losses not covered by this amendment and also reserves the right to show the difference in the value of his business before and after the results of said picketing as soon as he can reach a determination of same. Plaintiff further shows that he has suffered damages to the good will in his business operation as a result of the said unlawful, wanton, wilful, and malicious acts of defendants in the amount of $50,000.00."

7. By striking Paragraph (E) of the prayers of the original petition and substituting in lieu thereof the following Paragraph Letter (E): (E) That plaintiff be awarded the [fol. 17] sum of $6,026.86 as actual loss of profits and the sum of $50,000.00 for damages to the good will of his business.

Dickey, Futrell and Barker, By: Grady L. Dickey,
Attorneys for Plaintiff.

Amendment allowed, subject to objections. This 1st day of February, 1963.

Dunbar Harrison, Judge, Superior Court, E.J.C. of Georgia.

[fol. 18] *Duly sworn to by Haldred Overstreet, jurat omitted in printing.*

[File endorsement omitted]

[fol. 23]

IN THE SUPERIOR COURT OF SAID COUNTY

[Title omitted]

DEFENDANT'S ANSWER—Filed August 6, 1962

Now comes The National Association for the Advancement of Colored People, Defendant in the above stated action, said action being in default as of July 22, 1962, and seeking to open the same as a matter of right pursuant to the provisions of Georgia Code Section 110-401, and after payment of costs files this its answer:

1.

Defendant admits "Paragraph 1" of Plaintiff's Petition.

2.

Defendant denies "Paragraph 2" of Plaintiff's Petition.

3.

Defendant denies "Paragraph 3" of Plaintiff's Petition.

4.

Defendant denies "Paragraph 4" of Plaintiff's Petition.

5.

Defendant denies "Paragraph 5" of Plaintiff's Petition.

6.

For want of sufficient information, Defendant can neither admit or deny "Paragraph 6" of Plaintiff's Petition.

7.

Defendant denies "Paragraph 7" of Plaintiff's Petition.

[fol. 24]

8.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 8" of Plaintiff's Petition.

9.

Defendant denies "Paragraph 9" of Plaintiff's Petition.

10.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 10" of Plaintiff's Petition.

11.

Defendant Denies "Paragraph 11" of Plaintiff's Petition.

12.

Defendant denies "Paragraph 12" of Plaintiff's Petition.

13.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 13" of Plaintiff's Petition.

14.

Defendant denies "Paragraph 14" of Plaintiff's Petition.

15.

Defendant denies "Paragraph 15" of Plaintiff's Petition.

16.

Defendant denies "Paragraph 16" of Plaintiff's Petition.

17.

Defendant denies "Paragraph 17" of Plaintiff's Petition.

18.

Defendant denies "Paragraph 18" of Plaintiff's Petition.

19.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 19" of Plaintiff's Petition.

20.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 20" of Plaintiff's Petition.

[fol. 25] 21.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 21" of Plaintiff's Petition.

22.

Defendant denies "Paragraph 22" of Plaintiff's Petition.

23.

Defendant denies "Paragraph 23" of Plaintiff's Petition.

Wherefore, Defendant prays judgment of the Court.

D. L. Hollowell, B. C. Mayfield, E. H. Gadsden, Robert L. Carter, Attorneys for Defendant.

[fol. 26] *Duly sworn to by W. W. Law, jurat omitted in printing.*

[fol. 27]

SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

DEMURRER—Filed August 6, 1962

Now comes the National Association for the Advancement of Colored People, a New York corporation, one of the Defendants in the above styled case, and without waiving any of its rights to file pleas and answer, files this its general and special demurrers to the petition and for grounds, show as follows:

General Demurrer

Said petition does not as a whole, nor do any of its several paragraph or parts, show a cause of action against this defendant.

Special Demurrers

1. Defendant demurs to the allegations of paragraph eight (8) of the petition and moves to strike the same on the grounds that the allegations are irrelevant and constitute no part of plaintiff's alleged cause of action. Defendant demurs upon the further grounds that the said allegations are prejudicial.

2. Defendant demurs to that portion of the allegations of paragraph fifteen (15) of the petition which reads, "That all sorts of false and spurious accusations have been made against plaintiff by said defendants both before and after the trial of plaintiff in the Recorders Court of the City of Savannah irrespective of plaintiff's being discharged by the Court on the warrant brought against him", on the ground that said allegations are vague, indefinite, and incomplete, in that they fail to set out with any degree of particularly the nature and wording of the alleged false and spurious accusations.

[fol. 28] 3. Defendant demurs to that portion of the allegations of paragraph sixteen (16) of the petition and moves to strike the same which quotes "That the pickets are harassing and intimidating customers from going on the premises of the plaintiff by creating an atmosphere around plaintiff's premises of possible violence", on the grounds that nowhere in the petition are there facts alleged which would indicate that any of the defendants as named committed any such unlawful acts.

4. Defendant demurs to paragraph seventeen (17) of plaintiff's petition and moves to strike the same in that nowhere in said paragraph does plaintiff allege the time and place where the alleged acts occurred, of the persons who

were threatened with physical harm. Defendant further demurs to said paragraph on the ground that there are no facts alleged in the petition which would come within the scope of Section 54-801 of the Code of Georgia.

5. Defendant demurs to the allegations of paragraph nineteen (19) of the petition on the grounds that the same are vague, indefinite, lacking in clarity, and purely speculative, in that plaintiff does not allege any facts and figures which would show that he has suffered any loss in sales, and upon the further grounds that any allegations as to future loss of sales are purely speculative.

Wherefore, Defendant Prays, that said demurrer be sustained and action dismissed.

D. L. Hollowell, 859½ Hunter Street, N.W., Atlanta 14, Georgia; B. C. Mayfield, 910 West Broad Street, Savannah, Georgia; E. H. Gadsden, 458½ West Broad Street, Savannah, Georgia; Robert L. Carter, 20 West 40th Street, New York 18, New York, Counsel for Defendant.

[fol. 29] Certificate of Service (omitted in printing).

[fol. 58]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

MOTION TO DISMISS—Filed August 6, 1962

Now comes the Defendant in the above stated case and file this their motion to dismiss and show:

Defendants move to dismiss the petition and dissolve the temporary restraining order heretofore entered on the grounds that the petition fails to state a cause of action in that the Defendants have a right, protected by the Constitution of the United States, to engage in peaceful picket-

ing and other forms of peaceful activity designed to persuade the public not to patronize a commercial establishment that practices racial discrimination; and in engaging in these activities which form the basis of said petition and said temporary restraining order, Defendants were exercising a right of freedom of speech and assembly guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution, and the Constitution of the State of Georgia.

Wherefore, Defendants pray that said petition be dismissed and said temporary restraining order be dismissed.

D. L. Hollowell, 859½ Hunter Street, N.W., Atlanta 14, Georgia; B. C. Mayfield, 910 West Broad Street, Savannah, Georgia; E. H. Gadsden, 458½ West Broad Street, Savannah, Georgia; Robert L. Carter, 20 West 40th Street, New York 18, New York, Counsel for Defendant.

[fol. 59] [File endorsement omitted]

[fol. 60]

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

[Title omitted]

ORDER ON DEMURRERS AND ON MOTION TO DISMISS—
June 20, 1963

In brief plaintiff's original petition alleges an intentional and wilful conspiracy upon the part of the defendants to put him out of business by means of mass picketing, the purpose of which was to induce and maintain a boycott against plaintiff's business. The petition further alleges that actual picketing of his business took place. The number of pickets was sufficient to constitute mass picketing by surrounding the premises and sidewalks adjacent thereto so as to prevent persons from entering plaintiff's

place of business to trade with him. The petition further alleges that the object of destroying plaintiff's business was furthered by pickets intimidating persons approaching plaintiff's store, by creating an atmosphere of violence around plaintiff's premises, by inciting and inflaming customers, and by spreading false and misleading statements as to to conduct of plaintiff, all of which caused customers of the plaintiff to be fearful of trading in his store. It was further alleged that the pickets threatened physical violence to plaintiff's employees in an attempt to force them to quit the employment of plaintiff. That all of this was without reason or justification and for the avowed purpose of putting the plaintiff out of business.

That as a result of the foregoing acts plaintiff incurred [fol. 61] a loss of sales each day and continues to incur said loss. Hence, it appears from the original petition that in carrying out the design of the conspirators damage was inflicted upon the plaintiff in loss of business. This would give the plaintiff a right of action. (See Brown v. Jacobs Pharmacy, 115 Ga. 429; Woodruff v. Hughes, 2 Ga. App. 361, where it is held that the "Gist of the action is not the conspiracy alleged but the tort committed against the plaintiff and the damage thereby done wrongfully.")

The allegations of conspiracy enable the plaintiff not only to hold the actual participants in the wrong but those who conspired to have it done though not actually present and participating in the act. (See Woodruff v. Hughes, supra.)

The petition alleges that a mass meeting was called by the Savannah Branch of the National Association for the Advancement of Colored People pursuant to circulars and that this meeting was led by the individual defendants, Law and Jaudon, who, individually and as agents and officers of the corporation, organized what was called a selective buying campaign to begin the next day and that the individuals in their individual and representative capacity of the corporations involved organized, placed the pickets, and instructed them what areas to picket and what method of ap-

proach to take in talking to plaintiff's customers and prospective customers in order to prevent said customers from trading with plaintiff.

Plaintiff's petition was amended, in which amendment the acts of the defendants were described as unlawful, wanton, wilful, and with malice, and knowingly with malice, and that the picketing continued from the 31st day of May to the filing of the suit. The allegations of the agency of the individual defendants as to the corporations involved [fol. 62] were spelled out in greater particulars by the amendment. The amendment likewise gave specific and definite allegations as to the loss suffered by the plaintiff in his business and the prayers of the petition were amended accordingly.

To the original petition each of the defendants, corporate and individual, filed separate but identical general and special demurrers. These demurrers were not renewed to the petition as amended. Defendant also jointly filed a motion to dismiss. The Court will in one order rule on the demurrers and the motion to dismiss as to all defendants.

In the Court's opinion the original petition and the petition as amended are sufficient to set out a cause of action against the defendants, both corporate and individual. The corporate defendants are alleged to have acted by and through their agents, Law and Jaudon, who were named officers of the corporations. In the amendment it is alleged that they acted within the scope of their employment and authority. In the absence of any special demurrer directed either to the petition as originally drawn or to the petition as amended, the agency of the defendants to bind the corporation is sufficiently alleged. (See Cooney v. Atlantic Greyhound Corp., 81 Ga. App. 324; Progressive Life Insurance Co. v. Doster, 98 Ga. App. 641.)

"Generally speaking, any person who is capable in law of being sued and who takes part in a conspiracy may be held civilly liable as a conspirator. A corporation may be a party to a combination or conspiracy with other corporations or persons which aims at and accomplishes injury to

other corporations or persons and may be held civilly liable for the resulting damages to the same extent as a natural person." (See Conspiracy, Section 47, 11 Am. Jur. 579-580.)

[fol. 63] The books are full of cases dealing with damages resulting from acts committed as the result of a conspiracy and it is not necessary for the Court to cite any other decisions than those above to sustain its rulings here.

Defendants' special demurrers are five in number. Demurrer numbered 3 complains that the named defendants are not alleged to have participated in any acts of harassment or intimidation. As pointed out above, a conspirator may be held liable for the acts of others in carrying out the design of the conspiracy though the particular conspirator is not present and does not take part in the actual perpetration of the act. He, being a conspirator, becomes jointly and severally liable for the acts of any of the conspirators.

Paragraph 17 of the plaintiff's petition must be construed in the light of the whole petition which alleges that on the day following the mass meeting which was on May 31, 1962, the pickets were put out and continued to picket until the filing of the petition on June 22. It is, therefore, evident that the threats against plaintiff's employees must have been made during this period. Therefore, special demurrer numbered 4 directed to this paragraph is without merit.

While the demurrer is not directed to this point, it might be well to point out that a conspiracy to induce employees to decline to longer continue in the employ of a party is, if it results in damage, actionable. (Employing Printers Club v. Dr. Blosser Co., 122 Ga. 509 (1).

Special demurrer numbered 5 is met by amendment, paragraph 6 of which amendment specifically sets out the loss suffered by plaintiff.

Paragraph 8 of plaintiff's petition is not necessary in that the picketing and the damage resulting therefrom began before the events referred to in that paragraph. The lan-

[fol. 64] guage complained of in defendants' second demurrer is not necessary to any recovery because the picketing, harassment, and intimidation had begun before the false and spurious accusations in regard to the trial of the defendant in Police Court. Therefore, special demurrers numbered 1 and 2 of defendants are good, and paragraph 8 and the language complained of in paragraph 15 of plaintiff's petition should be stricken.

From what has been said above, it is, therefore, Considered, Ordered, And Adjudged that the defendants' general demurrer and defendants' special demurrers numbered 3, 4, and 5 be and the same are hereby overruled as to plaintiff's petition as amended.

It Is Further Considered, Ordered, And Adjudged that defendants' special demurrers numbered 1 and 2 be sustained and paragraph 8 of plaintiff's petition be stricken and the language complained of in paragraph 15 of said petition be likewise stricken.

Simultaneously with filing the demurrers, defendants filed a joint motion to dismiss. This motion is predicated on two contentions, racial discrimination and the guarantee of free speech by the Constitution of the United States.

In considering such a motion, as against demurrer, the allegations of plaintiff's petition must be taken as true. These allegations show that two-thirds of the plaintiff's customers were negroes, that he has in his employ at least one negro, the boy who was discharged and allegedly beaten by the plaintiff. How can it then be said as a matter of law that the plaintiff was discriminating against members of the negro race? Certainly not in his business or selling because they constituted the majority of his customers.

The mere fact that members of different races have differences or altercations or even a fight or one commits as-
[fol. 65] sault and battery upon the other does not as a matter of law constitute discrimination against either race. Defendants by their own demurrers sought to strike from the pleadings any reference to the court proceeding and

thus cannot complain of any discrimination shown in the administration of the laws as between the two individuals. Besides, discrimination against a race must be evidenced by many and continuous acts, not by a single one, and the only act alleged against the negro race was the alleged beating of the discharged employee. A single swallow does not make a summer.

Turning now to the First Amendment to the Constitution of the United States guaranteeing freedom of speech, the interpretation of that amendment is that so long as the speech or written article is true, it is, of course, guaranteed. While the demurrers complained of allegedly false statements in regard to the result of the Police Court hearing, there is no demurrer challenging the allegations in paragraph 16 of the plaintiff's petition that the "pickets incited and inflamed customers and the public by false and misleading statements regarding the conduct of plaintiff". These allegations were challenged only on the ground that they did not connect the defendants with them, which contention has been answered in the ruling on the demurrers.

While physical picketing is allowed and banners or signs stating true facts and positions of the various parties involved cannot be restrained, nevertheless, the law does not place its stamp of approval upon falsity. The laws against libel and slander are eloquent testimonials that freedom of speech does not give one the right to speak falsely of another with intent to injure. The allegations of this petition would not justify this Court in sustaining the motion [fol. 66] to dismiss on the theory that the acts complained of were protected by the Constitutional guarantee of free speech when it is alleged that the speech was false. Nor can the Court see in the allegations of the petition any violation as against the defendants of any provision of the Fourteenth Amendment to the Constitution of the United States.

It Is, Therefore, Considered, Ordered, And Adjudged that the motion to dismiss be and the same is hereby overruled.

In Open Court this 20th day of June, 1963.

Edwin A. McWhorter, Judge Superior Court,
E. J. C., Georgia.

cc—Messrs. Dickey, Futrell and Barker
cc—Mr. E. H. Gadsden
cc—Mr. B. C. Mayfield

[File endorsement omitted]

[fol. 67]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

State of Georgia
County of Chatham

#2978

HALDRED OVERSTREET,

VS.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a New York Corporation, d/b/ in Georgia, et al.

VERDICT OF JURY—November 14, 1963

We, the jury, find in favor of the plaintiffs and against the five (5) defendants collectively.

1. We hereby grant the permanent injunction prayed for.
2. We hereby award the plaintiff the following amounts:

A. Compensatory damages	$35,793.05
B. Punitive damages	50,000.00
Total	$85,793.05

William P. Haynes, Foreman.
November 14, 1963.

Verdict of Jury dated November 14, 1963.

[fol. 68]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

MOTION FOR NON SUIT—Filed November 14, 1963

Comes Now, National Association for the Advancement of Colored People, a New York Corporation, and moves the Honorable Court to enter a Non Suit in the above styled case and for grounds shows:

1.

The record is devoid of any legal evidence which was elicited during the trial which established that Defendant, W. W. Law, was an agent or a general agent of said corporation.

2.

Plaintiff has failed to make a prima facie showing that the National Association for the Advancement of Colored People, a New York corporation, did any act, legally or illegally, which gave rise to any damage to the plaintiff as alleged.

3.

Plaintiff has failed to make a prima facie showing that any of the other defendants while acting as an agent for said corporate defendant committed any act, legally or illegally, which resulted in damage to the plaintiff as alleged.

Wherefore, Defendant prays that the foregoing Motion for Non Suit, be granted and the petition be dismissed as to it.

D. L. Hollowell, B. C. Mayfield, E. H. Gadsden, Robert L. Carter, Attorneys for Defendants.

[fol. 69]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NON-SUIT—
November 14, 1963

The within motion for non-suit is overruled on each and every ground.

In Open Court this 14th day of November, 1963.

Edwin A. McWhorter, Judge, Superior Court, E.J.C., of Georgia.

[fol. 78]

State of Georgia
County of Chatham

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

Case No. 2978

HALDRED OVERSTREET

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; W. W. LAW, AND REV. F. D. JAUDON

JUDGMENT OF COURT—November 18, 1963

The above captioned case having come on for trial and the jury having returned a verdict as follows:

"We, the jury, find in favor of the plaintiff and against the five (5) defendants collectively.

1. We hereby grant the permanent injunction prayed for.

2. We hereby award the plaintiff the following:

(A) Compensatory damages $35,793.05

(B) Punitive damages $50,000.00

Total: $85,793.05

/s/ W. P. Haynes
Foreman

November 14, 1963"

The above verdict of the jury is hereby made the judgment of this court.

This 18th day of November, 1963.

Edwin A. McWhorter, Judge, Eastern Judicial Circuit of Georgia.

[File endorsement omitted]

[fol. 79]

In the Superior Court of Chatham County

[Title omitted]

Motion for New Trial—Filed November 21, 1963

Verdict for Haldred Overstreet at November term, 1963, of Court, on the 14th day of November, 1963.

The National Association For The Advancement of Colored People, a New York Corporation being dissatisfied with the verdict in said case, comes now within 30 days of the rendition of the same, and moves the court for a new trial, upon the following grounds, to wit:

1. Because the verdict is contrary to evidence and without evidence to support it.

2. Because the verdict is decidedly and strongly against the weight of the evidence.

3. Because the verdict is contrary to law and the principles of justice and equity.

Wherefore, movant prays that these its grounds for a new trial, be inquired of by the court, and that a new trial be granted.

D. L. Hollowell, B. C. Mayfield, E. H. Gadsden, Robert L. Carter, Attorneys for Movant.

[fol. 80]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

ORDER ON MOTION FOR NEW TRIAL—November 21, 1963

The foregoing motion read and considered. Let the same be filed and served upon counsel for petitioner, and let the counsel for the petitioner show cause before me on the 23 day of January, 1964, at 10 o'clock, a.m., at my office in the Chatham County courthouse, Savannah, Georgia, why the motion should not be granted.

Let this order act as a supersedeas until further order of court. In the meantime and until the final hearing of said motion, whenever the same may be had, movant is allowed to amend and perfect the motion, and to prepare and present for approval, a brief of the evidence, which brief of evidence may be filed in the clerk's office at any time within 10 days after the motion is heard and determined.

If, for any reason, said motion is not heard and determined at the time and place above fixed, it is ordered that the same be heard and determined at such time as may be agreed upon by counsel, and upon failure to agree, then at such time and place as the presiding Judge may fix, on the application of either party, of which time and place the opposite party shall have at least five days' notice; and if for any reason this motion is not heard and determined

before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at any term thereafter.

This 21 day of November, 1963.

Edwin A. McWhorter, Judge Superior Court, Eastern Judicial Circuit.

Due and legal service of the within motion and order acknowledged, time, copy and all other and further service waived. This 21 day of November, 1963.

R. E. Barker, Attorney for Plaintiff.

[fol. 104]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

ORDER ON MOTION FOR NEW TRIAL—September 24, 1964

The matter is before the Court on motion for new trial. The amended petition proceeded on its theory of a conspiracy with intent to destroy plaintiff's business. The general nature of the case and the problems confronting the Court were discussed and ruled upon in its order on demurrers.

The most comprehensive case the Court has found dealing with civil conspiracy is that of Cook v. Robinson, et al., 216 Ga. 328. In headnote 3 it is stated:

"The conspiracy may be pleaded in general terms, and this is true although the jurisdiction of the court to render judgment against one or more of the defendants depends upon allegations and proof of the conspiracy."

In the next headnote the Court states:

"But, where a cause of action is alleged, the fact of conspiracy, if proved, makes any actionable deed by one of the conspirators chargeable to all. The liability is joint and several."

In the last of the fifth headnote the Court states:

> "It is sufficient that two or more persons in any manner either positively or tacitly come to a mutual understanding that they will accomplish the unlawful design. And anyone, after a conspiracy is formed, who knows of its existence and purposes and joins therein, becomes as much a party thereto—as if he had been an original member."

[fol. 105] In Horton v. Johnson, 192 Ga. 338, on page 346, concerning the proof of conspiracy, the Court said or quoted authority to this effect:

> " 'In the reception of circumstantial evidence great latitude must be allowed. The jury should have before them and are entitled to consider every fact in issue and which will enable them to come to a satisfactory conclusion.' "

In reference to a conspiracy, this Court would paraphrase Code Section 37-706 and say:

> "A conspiracy may not be presumed, but, being in itself subtle, slight circumstances may be sufficient to carry conviction of its existence."

In Huckaby v. Griffin Hosiery Mills, 205 Ga. 88, on page 91 the Court said:

> "A conspiracy or common intent may be shown to have existed between parties by proof of acts and conduct and it may be shown by circumstantial or direct evidence. The law recognizes the intrinsic difficulty of proving a conspiracy—The conspiracy may sometimes be inferred from the nature of the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances."

See also Nobles v. Webb, 197 Ga. 242, on page 245.

One of the objections to the Court's charge (see Ground 14 of the amended motion) was, "As the Court sees it, you cannot get agency and conspiracy separated in this case." The Court does not consider this error because in proving a conspiracy you prove agency if the acts are committed in furtherance of the conspiracy, and thus a co-conspirator who may be absent becomes bound by the overt act committed by one of the conspirators. Nor does the fact that the neighborhood was already incensed and that the action of the defendants to this cause only endorsed and supported that which was already in progress relieve them of liability. (see Ground 1 of the amended motion.

[fol. 106] With this preface the Court will pass upon the several grounds of the motion for new trial.

The general grounds are hereby overruled because the evidence, in the Court's opinion, was sufficient to authorize the verdict.

The grounds of the amended motion will be referred to consecutively.

Ground 1 of the amended motion is overruled.

Ground 2 is overruled.

Ground 3 is overruled. The defendant Law admitted that he assisted in placing the pickets on the picket line, and the evidence shows that several of these remarks were made by the pickets.

Ground 4 is overruled.

Ground 5 is overruled for it clearly appears that the presence of the pickets incited, not only in the instance complained of but in others, acts of violence around the plaintiff's place of business.

Ground 6 is overruled. The Court reiterates that if the presence of the pickets and what they told people brought about the situation of tenseness and lawlessness about the plaintiff's place of business, the pickets and those responsible for them would be liable if the picketing was not justified or amounted to mass picketing.

Ground 7 is overruled.

Ground 8 is overruled.

Ground 9 is overruled.

Grounds 10 and 11 complained about the Court's refusal to grant a nonsuit. These are not proper grounds to be included in the motion for new trial. Reserve Insurance Co. v. Foster, 96 Ga. App. 337 (2); Crawley v. Selby, 208 Ga. 531 (1).

Ground 12 is overruled.

Ground 13 is overruled.

Ground 14 is overruled.

[fol. 107] Ground 15 is overruled.

Ground 16 is overruled.

Ground 17 is overruled.

Ground 18 is overruled.

Ground 19 is overruled.

Ground 20 is overruled.

Ground 21 is overruled.

Ground 22 is overruled.

Ground 23 is overruled.

Ground 24 is overruled.

In view of the prefatory remarks hereinbefore made, the Court deems it not necessary to give its reasons for its ruling on each of the various grounds for new trial contained in the original and amended motion.

It Is, Therefore, Considered, Ordered, And Adjudged that the Court having overruled each and every ground of the motion and the amended motion for new trial, a new trial is hereby denied to the defendants in this cause.

In Open Court this 24th day of September, 1964.

Edwin A. McWhorter, Judge Superior Court, E.J.C., Georgia.

cc—Messrs. Dickey, Futrell & Barker
Mr. B. Clarence Mayfield
Mr. E. H. Gadsden
Mr. D. L. Hollowell

[fol. 108]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

ORDER VACATING ORDER ON MOTION FOR NEW TRIAL—
October 2, 1964

On the 24th day of September, 1964, the Court entered an order overruling the motion and the amended motion for new trial and denying a new trial in the above entitled cause. Said order was filed in the Clerk's Office of this Court and appears in Minute Book 223, Folio 286.

It has been the custom of this Court immediately upon entering orders to mail copies thereof to the attorneys. Upon investigation the Court finds that through inadvertence copies of the order above referred to denying a new trial were not mailed to the attorneys, one of whom, at least, resides in Atlanta. To mail copies of the order now would be to deprive the parties ruled against of eight days in which they are allowed by law to except by bill of exceptions to the ruling of the Court. This would be manifestly unfair as counsel rely upon the Court mailing copies of orders and do not watch the Clerk's office.

In view of the above and at the same term of Court at which the order denying motion for new trial was entered, It Is Considered, Ordered, And Adjudged that the order denying a new trial in this case be and the same is hereby revoked and vacated.

In Open Court this 2nd day of October, 1964.

Edwin A. McWhorter, Judge Superior Court, E. J. C., Georgia.

cc—Messrs. Dickey, Futrell & Barker
Mr. B. Clarence Mayfield
Mr. E. H. Gadsden
Mr. D. L. Hollowell

[fol. 110]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

ORDER ON MOTION FOR NEW TRIAL—October 9, 1964

The matter is before the Court on motion for new trial. The amended petition proceeded on its theory of a conspiracy with intent to destroy plaintiff's business. The general nature of the case and the problems confronting the Court were discussed and ruled upon in its order on demurrers.

The most comprehensive case the Court has found dealing with civil conspiracy is that of Cook v. Robinson, et al., 216 Ga. 328. In headnote 3 it is stated:

> "The conspiracy may be pleaded in general terms, and this is true although the jurisdiction of the court to render judgment against one or more of the defendants depends upon allegations and proof of the conspiracy."

In the next headnote the Court states:

> "But, where a cause of action is alleged, the fact of conspiracy, if proved, makes any actionable deed by one of the conspirators chargeable to all. The liability is joint and several."

In the last of the fifth headnote the Court states:

> "It is sufficient that two or more persons in any manner either positively or tacitly come to a mutual understanding that they will accomplish the unlawful design. And anyone, after a conspiracy is formed, who knows of its existence and purposes and joins therein, becomes as much a party thereto—as if he had been an original member."

[fol. 111] In Horton v. Johnson, 192 Ga. 338, on page 346, concerning the proof of conspiracy, the Court said or quoted authority to this effect:

> "'In the reception of circumstantial evidence great latitude must be allowed. The jury should have before them and are entitled to consider every fact in issue and which will enable them to come to a satisfactory conclusion.'"

In reference to a conspiracy, this Court would paraphrase Code Section 37-706 and say:

> "A conspiracy may not be presumed, but, being in itself subtle, slight circumstances may be sufficient to carry conviction of its existence."

In Huckaby v. Griffin Hosiery Mills, 205 Ga. 88, on page 91 the Court said:

> "A conspiracy or common intent may be shown to have existed between parties by proof of acts and conduct and it may be shown by circumstantial or direct evidence. The law recognizes the intrinsic difficulty of proving a conspiracy—The conspiracy may sometimes be inferred from the nature of the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances."

See also Nobles v. Webb, 197 Ga. 242, on page 245.

One of the objections to the Court's charge (see Ground 14 of the amended motion) was, "As the Court sees it, you cannot get agency and conspiracy separated in this case." The Court does not consider this error because in proving a conspiracy you prove agency if the acts are committed in furtherance of the conspiracy, and thus a co-conspirator who may be absent becomes bound by the overt act committed by one of the conspirators. Nor does the fact that the neighborhood was already incensed and that the action of the defendants to this cause only endorsed and supported that which was already in progress relieve them of lia-
[fol. 112] bility. (see Ground 1 of the amended motion.

With this preface the Court will pass upon the several grounds of the motion for new trial.

The general grounds are hereby overruled because the evidence, in the Court's opinion, was sufficient to authorize the verdict.

The grounds of the amended motion will be referred to consecutively.

Ground 1 of the amended motion is overruled.

Ground 2 is overruled.

Ground 3 is overruled. The defendant Law admitted that he assisted in placing the pickets on the picket line, and the evidence shows that several of these remarks were made by the pickets.

Ground 4 is overruled.

Ground 5 is overruled for it clearly appears that the presence of the pickets incited, not only in the instance complained of but in others, acts of violence around the plaintiff's place of business.

Ground 6 is overruled. The Court reiterates that if the presence of the pickets and what they told people brought about the situation of tenseness and lawlessness about the plaintiff's place of business, the pickets and those responsible for them would be liable if the picketing was not justified or amounted to mass picketing.

Ground 7 is overruled.

Ground 8 is overruled.

Ground 9 is overruled.

Grounds 10 and 11 complained about the Court's refusal to grant a nonsuit. These are not proper grounds to be included in the motion for new trial. Reserve Insurance Co. v. Foster, 96 Ga. App. 337 (2); Crawley v. Selby, 208 Ga. 531 (1).

Ground 12 is overruled.

Ground 13 is overruled.

Ground 14 is overruled.

[fol. 113] Ground 15 is overruled.

Ground 16 is overruled.

Ground 17 is overruled.

Ground 18 is overruled.

Ground 19 is overruled.

Ground 20 is overruled.

Ground 21 is overruled.

Ground 22 is overruled.

Ground 23 is overruled.

Ground 24 is overruled.

In view of the prefatory remarks hereinbefore made, the Court deems it not necessary to give its reasons for its ruling on each of the various grounds for new trial contained in the original and amended motion.

It Is, Therefore, Considered, Ordered, And Adjudged that the Court having overruled each and every ground of the motion and the amended motion for new trial, a new trial is hereby denied to the defendants in this cause.

In Open Court this 9th day of October, 1964.

Edwin A. McWhorter, Judge Superior Court, E. J. C., Georgia.

cc—Messrs. Dickey, Futrell & Barker
Mr. B. Clarence Mayfield
Mr. E. H. Gadsden
Mr. D. L. Hollowell

Order on Motion for New Trial filed in this office October 9, 1964, by F. W. Dasher, Jr., Deputy Clerk, Superior Court, Chatham County, Georgia.

The Original Motions for New Trial filed by the defendants, with all orders and entries of service thereon including acknowledgments of service and entries of filing.

[fol. 114]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

EXCERPTS FROM AMENDMENT TO THE ORIGINAL MOTION FOR A NEW TRIAL—April 20, 1964

* * * * * * *

[fol. 119] Ground 6

Because the following material evidence was illegally admitted by the court to the jury, over the objection of movants, to-wit: The court permitted the jury to retire.

"The Court: As I understand the plaintiff's position in this case is they are trying to show that these acts of violence were connected with the pickets or inspired by the pickets.

Attorney Barker: Yes, sir. (Brief of Evidence page 102.)

The Court: Well, I've got some doubts about it, but I'm going to admit it and limit it to the time that the pickets

were actually there in and about the store or around it, or the corners of the streets. I'm not going to let you go in after the injunction. Just simply show that there was an atmosphere of violence after the boycott stopped that hadn't existed before. Now leaving the inference to the jury as to whether it was the result of any direction on the part of the defendants in the case. You have made your objection; have noted for the record, I have a good deal of doubt about it, but it looks like somewhere you've got to draw the line. And the law does require some certainty, of course. You just can't go all over the world. Just be careful and limit it to that. Now let's understand that your objection goes right on.

[fol. 120] Attorney Hollowell: Thank you, sir. So that the record—we understand that all matters relating to the types of questions that are being asked and which are eliciting these general acts of violence, that I have a standing objection.

The Court: That's right. So note it, Mr. Reporter. (Brief of Evidence page 111.)

(a) As indicated by the statements above movants then objected to all future evidence as to general acts of violence unconnected to the defendants. The court agreed that movants objections to all such acts would be noted.

(b) The opposing party to movants offered the evidence objected to.

(c) The court overruled the objection and admitted the evidence. (See Brief of Evidence page 110.)

(d) The evidence was material, prejudicial and hurtful to the movants, for the following reasons: The evidence offered permitted the jury to infer that the acts of violence testified to were attributable to the defendants even though there was no testimony to specifically connect the acts with the defendants.

(e) The name of the witness whose testimony is alleged to have been illegally admitted over valid objection is Wilma Love.

(f) Movants aver that the inadmissibility of the evidence was beyond doubt.

• • • • • • •

[fol. 123] Ground 10

Because the court erred in refusing to allow movants oral motion for non-suit submitted at the close of plaintiff's evidence as to defendants National Association For The Advancement of Colored People, Incorporated; • • • said motion for the non-suit being based upon the premise that the evidence showed no relationship of agency between the individual defendants and the above named corporate defendants and its associated branches other than by the declaration of the individual defendants, W. W. Law, and Rev. F. D. Jaudon. (Brief of Evidence pages 315 to 328.)

• • • • • • •

[fol. 124] Ground 12

Because the court erred in refusing to allow movants' motion for a directive verdict submitted at the close of all evidence as to each defendant, said motion being based upon the grounds that plaintiff's had not carried the burden of proof to establish that he was entitled to a judgment against any of the defendants. The evidence failed to show a conspiracy between any of the defendants; it failed to show an agency relationship between the individual defendants, the corporate defendants and the unincorporated association; • • •

Ground 13

Because the court erred in charging the jury as follows: "Did they participate through their agents and members and people who had a right to bind them in this conspiracy? Was this conspiracy carried out by members of the local organization? Was what took place a result of their activities and the placing of the pickets at the various corners? I don't think—and I charge you—that the mere fact that

there had been protests made before the meeting of the Association, there has been indignation expressed by a group of people, and certain action taken, would not prevent the organization or the parties from conspiring. They could have joined the movement and been just as guilty of a [fol. 125] conspiracy as if they had initiated it. But did they do it? Those are the facts for you to determine. Now was the purpose of the conspiracy legal or illegal? Did these people have a right as a result of an individual altercation, of an altercation between two individuals, however, unjust it might have been or appear to have been, did they have the right to take concerted action against the individual who is alleged to have committed the abuse?

Movants aver that such charge was erroneous and injurious to them because:

(a) It was misleading in that the evidence adduced at the trial was that admittedly the Georgia State Conference of the N. A. A. C. P. did work and operate under the auspices of the N. A. A. C. P., a corporation, but the alleged conspiracy was not condoned or sanctioned by the N. A. A. C. P., a corporation, neither did the N. A. A. C. P., a corporation have knowledge of any planned boycott, neither was there any evidence that the people who gathered on the various corners and set themselves "up" as pickets were members or agents of any branch of the N. A. A. C. P., a corporation, N. A. A. C. P., Georgia State Conference, N. A. A. C. P., Savannah Branch, all of which renders this portion of the charge misleading and vague.

(b) That is, it was confusing to the jury.

(c) That it was also erroneous for the following reasons: It was incumbent upon the petitioner to establish by evidence that the pickets were agents of one of the N. A. A. C. P., divisions or branches, and acting within the scope of the authority or pursuant to established or sanctioned policies of said organization.

Ground 14

Because the court erred in charging the jury as follows: "As the court sees it, you can't get agency and conspiracy separated in this case."

Movants aver that said charge was erroneous and not sound as an abstract principle of law.

[fol. 126]

Ground 15

Because the court erred in charging the jury as follows: "I charge you that in this case you can consider the effect of the picket. Did the pickets incite—were the fact that the pickets were there incite activity upon people who were not at all connected with the organization; and if that was incited by the pickets, by their mere presence, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted."

Movants aver that such charge was erroneous and injurious to them because:

(a) It deprived defendants of rights of freedom of speech in violation of the First and Fourteenth Amendments of the United States Constitution, since the charge implied that if unlawful conduct was "incited by the pickets by their mere presence," defendants would somehow be responsible for such conduct.

(b) It deprived the defendants of rights and property without due process of law in violation of the Fourteenth Amendment of the United States Constitution, since it implied to the jury that if unlawful acts were "incited by the pickets by their mere presence," defendants would be the proximate cause of any unlawful acts which occurred.

• • • • • • •

[fol. 127]

Ground 17

The verdict is erroneous because it deprives the defendant N.A.A.C.P., Inc. of rights and property without due process of law in violation of the Fourteenth Amendment

to the United States Constitution, in that the evidence shows that it had no knowledge of the picketing involved (Brief of Evidence, page 46); and did not approve or disapprove the action of the Savannah Branch. (Brief of Evidence, page 48.)

• • • • • • • •

[fol. 128] Ground 22

Because the court erred in giving the following charge to the jury: "Before the plaintiff can recover, you must be satisfied that the preponderance of the credible evidence in this case showed that the defendants conspired to unlawfully injury plaintiff in his business and by illegal acts did in fact injured him."

Movants aver that said charge was erroneous and not sound as an abstract principle of law.

• • • • • • • •

[fol. 129] Wherefore, Movants pray that these, their additional grounds of motion for a new trial, be inquired of by the court, approved and allowed, and that a new trial be granted them.

B. C. Mayfield, E. H. Gadsden, D. L. Hollowell, Attorneys for Movants.

The defendants listed in this amended motion for new trial each filed individually a skeleton motion for new trial, and by consent of parties and order of Court they are allowed to unite in one amended motion for new trial.

In Open Court this 20th day of April, 1964.

Edwin A. McWhorter, Judge, Superior Court, E. J. C. of Ga.

[fol. 133]

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

Case No. 2978.

HALDRED OVERSTREET,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: THE GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: THE SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; W. W. LAW; and REV. F. D. JAUDON.

Transcript of Hearings

Transcript of hearing held in the above stated case November 12th, 13th and 14th, 1963, before the Honorable Edwin A. McWhorter, Judge of the Superior Court, Eastern Judicial Circuit of Georgia.

APPEARANCES:

For the plaintiff: Robert E. Barker, Esq., Grady Dickey, Esq., Savannah, Georgia.

For the defendants: Eugene H. Gadsden, Esq., B. Clarence Mayfield, Esq., Savannah Georgia. Donald L. Hollowell, Esq., Atlanta, Georgia.

[fol. 152] MR. WESLEY W. LAW took the stand for the purpose of cross examination, was sworn, and testified as follows:

Cross examination.

By Attorney Barker:

Q. Would you state your name for the record please?
A. Wesley W. Law.

Q. I believe you'll have to speak up just a little bit louder. There's some outside noise, and I don't believe this gentleman back here can hear you.

A. My name is W. W. Law.

Q. And what is your address?

A. 2009 Florence Street.

Q. And where are you employed?

A. United States Post Office, Savannah.

Q. Do you have any connection with the—what is commonly known as the NAACP, the National Association for the Advancement of Colored People?

A. Yes, I do.

Q. Would you state to the Court your connection with this organization?

A. I am president of the Savannah branch of the National Association for the Advancement of Colored People; I am president of the Georgia State Conference of NAACP.

Q. Now would the Georgia State Conference of the NAACP be all of the branches within the State of Georgia?

[fol. 153] A. It would.

Q. Now what affiliation do the local branch and the state branch have with the national association, a New York corporation?

A. Would you state that question again?

Q. What affiliation do the local branches within the State of Georgia and the state branch as a whole have with the national association, a New York corporation, located I believe in New York City?

A. Well, the local branch would be a unit of the Association.

Q. Do you receive orders or counsel by the national association?

A. Only through the annual convention of the association.

Q. At this annual convention are you—

A. The annual convention and the actions of the Board of Directors.

Q. At this annual convention are you counseled in methods of furthering your efforts in the local district?

A. There are some discussions.

Q. Are you counseled by the officers and directors and the representatives of the national association?

A. I don't quite know whether counsel would be the word. As I say, there would be workshops and discussions.

Q. And who would conduct these workshops?

[fol. 154] A. They may be conducted by members of the staff or they may be conducted by leaders from various communities.

Q. At this annual convention or—what was the word you used? The annual get-together for the NAACP? Annual—

A. Annual conference or convention.

Q. Annual conference. It is arranged and set-up by the national president and directors of the national association, so, therefore, they would be directly responsible for the workshops, or they would be directly responsible for having the workshops set up?

A. Yes.

Q. You also stated that you were the president of the local association. Is the local association a corporation?

A. It is not.

Q. You are affiliated with the national association, is that correct?

A. Yes.

Q. Is the state association a corporation?

A. It is not.

Q. You are also affiliated through the state and local under the national corporate charter corporated in New York—

A. Yes.

Q. —or incorporated in New York?

A. Yes.

[fol. 155] Q. You are a resident, personally, of Savannah, Chatham County, Georgia?

A. I am. All my life.

Q. On or about May 31st, 1962, did you attend a meeting for the National Association for the Advancement of Colored People at Saint Phillips Monumental Church?

A. I did.

Q. And who is the pastor of Saint Phillips Monumental Church?

A. The Reverend F. D. Jaudon.

Q. Does the Reverend F. D. Jaudon hold any position in the local branch of the NAACP?

A. Yes, he does.

Q. Would you state that position?

A. He is the first vice president.

Q. What was the purpose of this meeting on May 31st, 1962, at the Saint Phillips Monumental Church?

A. To receive reports from members of the neighborhood in and surrounding the Tropical Market and to hear from the mother of Robert Lee Bolton.

Q. Prior to this meeting— the beating allegedly occurred on May 30th, 1962, is that correct?

A. That's correct.

Q. And the meeting was then called for May 31st, 1962, at eight o'clock?

[fol. 156] A. Yes.

Q. And you had spoken to the mother of Robert Bolton, I believe is the name?

A. I had not spoken to her, but someone in the office had; yes.

Q. And did you yourself call the meeting?

A. It was done with my approval.

Q. Did you also approve the bulletin to be distributed among the members or the people of Savannah, "NAACP mass meeting tonight, Saint Phillips Monumental AME Church on Park Avenue and Jefferson Street, Reverend F. D. Jaudon, pastor, at eight o'clock," and then in capital letters, "Protesting the beating of a fourteen year old Negro boy by the owner of the Tropical Market, 1601 Montgomery Street, corner of 32nd Street. Come get the truth about the brutality that sent this boy to the hospital where

he remains a patient. Come tonight, 8 p.m." Now did you authorize this bulletin or circular?

A. It was done in our office.

Q. And did you authorize it?

A. I had no objection to it. I believe it was done while I was at work.

Q. Did you authorize the wording of this circular?

A. It has my approval.

Q. It had your approval at the time of the printing?

[fol. 157] A. Well, that, I am not sure, but surely I made no objection to it.

Q. Do you know where this circular was printed?

A. In the branch office.

Q. So this would be a direct action of the local branch of the NAACP, an affiliate of the National Organization for the Advancement of Colored People, a New York corporation?

A. It would be.

* * * * * * *

[fol. 165] Q. Now were—the pickets that were at the Tropical Market were there under your direction and under the direction of the NAACP and—the NAACP?

A. Oh, yes.

Q. So, therefore, you would be responsible for the actions of the pickets at the Tropical Market?

The Court: Wouldn't that also call for an opinion that must be drawn by the jury.

Attorney Barker: I'm sorry. I will withdraw that question.

The Court: Defense counsel aren't making any objection, but the question of agency is in the case. You're alleging agency.

* * * * * * *

[fol. 182] Q. Did you make a report of this action on the part of the local branch of the NAACP to the National Association for the Advancement of Colored People?

A. Not until the injunction was served.

Q. And would you have in the normal course of business of running the local branch make this report of the actions of the local branch to the national branch?

A. As a part of our annual activities.

Q. And was there any disavowment on the part of the national branch of the Association for the Advancement of Colored People of the action that the local branch had taken in this one incident?

A. I know of none.

[fol. 183] Q. You received—if any were to be sent, would they through the normal course of business be sent to you as president?

A. I would think so.

* * * * * * *

Q. Have you ever received any communications from the national chapter or the national corporation of—with anything with regards to this action on the part of the local branch? In other words, did they approve of your actions here on the local level?

A. I have stated that the first knowledge they had of the action was when the injunction was served against the National Association, and it was necessary for us to transmit to them the injunction papers.

Q. Did the national branch at that time approve of the action that had been taken by the local branch?

A. I don't really believe that that entered into the situation at all.

[fol. 184] Q. Through any conversations or communications with the officers of the national branch did they express any approval of this action?

A. I don't believe I've had any experience of that sort.

Q. But no disapproval whatsoever?

A. As I have indicated, the only thing that I can testify to is the fact that they received the restraining order that had been served upon me.

Q. The members that took part in the picketing of the

Tropical Market were local members of the National Association for the Advancement of Colored People?

A. Yes.

* * * * * * * *

[fol. 333] EXCERPTS FROM TESTIMONY OF MRS. ALLIE COX

Q. All right. Now how many of the people that you say that were standing around at these distant places did you hear tell a customer this?

A. How many people did I hear them—how many people did I hear tell them that?

Q. Yes.

[fol. 334] A. Why there was plenty of them.

Q. How many—

A. W. W. Law was on the corner for one.

Q. Ma'am.

A. W. W. Law was on the corner.

Q. When did you see him on the corner?

A. When did I see him—evening after evening. I know him when I see him.

Q. Well, I mean let's—give me some reference as to time?

A. As to time?

Q. Yes.

A. Late in the afternoons he would come out on the corner where the picketers were.

Q. Late in the afternoon you would see him come out on the corner?

A. Oh, yes.

Q. All right. And what would he do?

A. He would stand up and talk to the picketers.

Q. All right. You've seen him stand up and talk—

A. Yes.

Q. And that's all you ever saw him do?

A. I've seen him stand up and talk to them, and the customers would start in the store and he'd be standing right there, and these boys would call them out and he was [fol. 335] standing there with them.

Q. I see. He would call out—these people that you say—

A. That were with him would call they out, and he would be standing there with them.

Q. I see. But they would call from the location where they were, is that right?

A. They would call—they would call them from the location, and if they went in the store, they'd go to the—as far as the door and tell them to get out of there, it was off limits. And they made them get out and not go back in.

Q. I see. They came in and got them by the arm and say, "Come on out here."

A. No, I didn't say that. I said they'd go to the sidewalk and call them out.

Q. Oh, to the sidewalk?

A. That's what I said.

Q. You mean to the edge of the side of the curb—

A. To the front of the store on the sidewalk, and called them out.

Q. The curb—the—where the sidewalk and the curb.

A. That's right.

Q. I see. Who did you see do that?

A. Who did I see?

[fol. 336] Q. Whom did you see? Name me one.

A. The one that was call—

Q. Name me one.

A. Drayton for one.

Q. Who?

A. Drayton.

Q. Who's Brayton?

A. Drayton.

Q. Drayton?

A. Drayton.

Q. Can you spell it?

A. I don't know whether I can spell it or not, but that's his name, Drayton.

Q. Who is he?

A. He was one of the main head leaders.

Q. How do you know that?

A. Because he was always there. He stayed there day and night.

Q. Did he ever come in and buy anything in your store?

A. No, never did.

Q. Did he ever grab anybody and tell them not to go in there? No, he never did.

A. He would follow them as far as the sidewalk—

[fol. 337] Attorney Barker: May it please the Court, now he's beginning to testify; I'm the one only in the courtroom that's supposed to be able to do that.

The Court: Don't answer for the witness.

Attorney Hollowell: Very well, Your Honor. Would the reporter read the question.

Reporter: Did he ever grab anybody and tell them not to go in there? No, he never did.

Attorney Barker: And I believe, sir, she was continuing with an explanation.

Attorney Hollowell: She hadn't even answered that yet. I withdraw it—

The Court: You've asked that question many times.

Attorney Hollowell: Not as to Drayton, sir.

The Court: No, not as to Drayton, but you've asked it many times—

Attorney Hollowell: She specified Drayton.

The Court: —and you're wearing the patience of the Court out. You have a right to cross examination, but the Court doesn't have to sit here and let you go on for hour after hour.

Attorney Hollowell: I understand that, Your Honor, and [fol. 338] counsel certainly doesn't want to wear on the patience of the Court, but I submit that we have sort of—a witness that—

The Court: You've gone over this thing over and over again, and I'm warning you now not to be going over it so much.

Attorney Hollowell: Very well, sir.

The Court: Now you asked her specifically as to Drayton.

Attorney Hollowell: That's correct, sir.

The Court: What he's trying to get from you, Mrs. Cox, did you ever see Drayton put his hand or use force to keep anyone from going in the store.

The Witness: No, sir; I never did see him hit nobody, but he would stand on the corners and tell them to not to go in there, that that place was off limits, and he mean not to catch none of them in there. Now that's all I saw and heard.

The Court: You heard him make those—

The Witness: I heard him make them remarks time and time again.

Q. To whom did he make them?

A. To the colored customers that would start in the store.

Q. What do you mean start in the store? Did he make [fol. 339] that when they were on the corner?

A. No. They'd be going in the store, and he would call them out.

Q. He would call them out. And they would come?

A. That's right. They would come; yes, sir.

* * * * * * *

[fol. 453]

MOTION FOR NON-SUIT AND RULING THEREON

Attorney Gadsden: If Your Honor please, in view of the fact that the plaintiff has rested his case, we respectfully move for a non-suit on the ground that there hasn't been any evidence here presented by the petitioner to show that the National Association for the Advancement of Colored People, Incorporated, neither that its associated branches or has the local conference been engaged in any acts as alleged by the petition. The only evidence educed here has simply shown that the petitioners—the defendants were at various times engaged in a peaceful protest activity, which is guaranteed to them by the Fourteenth Amendment of the U. S. Constitution. And we respectfully move that the Court grant a non-suit.

Attorney Barker: May it please the Court, the national corporation came in and answered. By calling the defen-

dant, W. W. Law, to the stand I believe without doubt that we established that they are affiliated all the way down, that they are a part of this corporation, that they make reports to this corporation, that there was no disapproval by the national corporation of the acts of the local corporation, or the local agents, or the agents of the local corpor—local affiliation, I'm sorry. That W. W. Law, [fol. 454] as being president of the State association, was acting in a dual capacity, that of being president of the local association and that of being president of the State association, in calling for this action against the Tropical Market. I believe the rest of it would be strictly facts to be carried over to the jury of whether it has been tied in closely enough and whether the acts of the parties thereto were sufficient to set forth the allegations as we have in our petition.

Attorney Mayfield: If Your Honor pleases, I'd like to readdress myself to the Court.

The Court: I don't want to hear you at this time. I don't want to hear you at this time.

Attorney Mayfield: Oh, yes, Your Honor.

The Court: Just sit down for a while.

Note: (Pause while the Court examines the records in the case.)

The Court: As I recall the evidence, the only evidence of the corporation was of the New York corporation. The others were described as unincorporated, as being affiliated with the New York corporation. Now there was a recent act passed—I looked for it last night and couldn't find it—about suits against unincorporated organizations, other than our general statute. There was one passed I'm sure. [fol. 455] I haven't—do you recall whether it's codified, any counsel?

Attorney Hollowell: I think it's codified under the Title 22, if I'm not mistaken, Your Honor, which permits suing of unincorporated associations without—by merely bringing the action or serving the officers thereof and in the

association name. This is my recollection of how it reads in substance.

The Court: I kept looking under churches, unincorporated, corporations, and affiliates, and didn't find anything. I did not look under the corporation act.

(Pause.)

The Court: Now conceding for the sake of argument that the national association is incorporated—

Attorney Hollowell: I think you were looking for 3-118, Your Honor, under Actions; the 1959 act.

The Court: Under Actions?

Attorney Hollowell: Yes, sir. 3-118, I believe. That's probably—you mean suits brought against unincorporated associations?

The Court: Yes, sir. Well, get me Title three.

Attorney Hollowell: That reads: "Actions or suits may be brought—may be maintained against and in the name of any unincorporated organization or association for any [fol. 456] cause of action or upon which the plaintiff therein may maintain such an action against the members of such organization or association." Is that the one you had reference to?

The Court: Yes, that's the one I wanted.

Attorney Hollowell: That's on page 94 of Title three.

(Pause.)

The Court: —This was the point I'm about to raise: Conceding that a suit can be brought against an unincorporated society or organization under this Act, and that unincorporated association is affiliated with a national association which is incorporated and which is a foreign corporation of the State of Georiga, would the fact of affiliation alone; that is, they have the same general objects and purposes, to wit, the advancement of the colored race or

the Negro race, would the national association then be bound by the acts of the affiliated association, they not being incorporated, and, so far as the evidence is concerned; there being no evidence to the effect that any member was the agent of the national corporation. In other words, they were just affiliated.

Attorney Dickey: We alleged, Your Honor, that W. W. Law was an agent and in evidence we produced a circular [fol. 457] distributed by W. W. Law—or his authorization, and distributed giving notice of this meeting. And our petition alleges that he was an agent, and acting pursuant to the authority as such agent called this meeting. And here's the circular showing NAACP, National Association for the Advancement of Colored People.

Attorney Mayfield: If Your Honor pleases, if I may call to the Court's attention, this circular does not under any pretenses show that this was under the auspices of the National Association for the Advancement of Colored People, Incorporated; and as I recall the face of the circular, Your Honor, I recall no recollection of the—there being any indication that Mr. Law or Reverend Jaudon were acting in a capacity as a representative of the National Association for the Advancement of Colored People, Incorporated, or the Georgia State Conference of the National Association for the Advancement of Colored People.

The Court: There was no evidence that the State Conference was incorporated and there was no evidence that the local society was incorporated.

Attorney Mayfield: That's right, Your Honor.

Attorney Barker: Evidence to the contrary, I believe, sir.

[fol. 458] The Court: Produced by Law on the witness stand.

Attorney Barker: Yes, sir.

Attorney Mayfield: Yes, sir.

The Court: If I recollect the testimony correctly, he testified that the National Association was incorporated.

Attorney Barker: Yes, sir.

The Court: And that they worked under the National Association, that is, they made reports to them and—

Attorney Barker: Attended workshops under the direction of the officers and directors of the National Association.

The Court: That's right; he testified to that, attending workshops; that is, methods and means of securing—

Attorney Barker: Or, in effect, counseling.

The Court: And that after this situation had developed it was reported—when the suit was filed, it was reported to the National Association. Now—

Attorney Mayfield: I respectfully submit, Your Honor, that the—

The Court: Well, just wait a minute now. Just give me time to look at this answer.

(Pause.)

[fol. 459] The Court: Mr. Reporter, the only testimony as I see, other than that circular, bearing on this issue would be that of W. W. Law. How long before you could get a transcript of that for me?

Reporter: About three or four hours for a transcript.

Attorney Hollowell: Your Honor, I think—I don't know. I'll have to ask counsel this, but I think it might be pretty generally stipulated, and—insofar as we remember the evidence, and we would stand to be corrected by counsel for the plaintiff if we were in error—if we are in error. I submit that that is the only testimony that has come into the record and was—

The Court: Well, you weren't here when Law testified.

Attorney Hollowell: I mean counsel here was, and this is the information that comes from them. I only rise now because of being chief counsel; and this is what they indicate to me, and I say counsel for the plaintiff could correct us if this is in error. Mr. Barker—if the Court would permit—do you have any recollection of there having been any other testimony?

The Court: Law testified, according to my notes, that the local is not incorporated, the State is not incorporated,

local branch a unit of National Association, annual convention, controlled by the annual convention and actions [fol. 460] of the Board of Directors, workshops, send representatives and go to workshops. The answer for the National Association denies Paragraph 2, which alleges the agency.

Attorney Dickey: If Your Honor please, the reason we believe the record would reflect a direct association with the defendant Law with the National Association is we followed—this was defendant Law's testimony taken. We didn't put it in evidence, but we followed this in asking him questions on the stand. "Did you attend a meeting of the National Association for the Advancement of Colored People at Saint Phillips Monumental Church on May 31st of 1962?" I think his answer will be yes, he did.

The Court: I'm certain his answer was yes; but that, as I understood it, was the local association.

Attorney Dickey: We alleged in our amended petition that there was a meeting of the National Association for the Advancement of Colored People, that the meeting was held pursuant to a circular—

The Court: The New York corporation? You see, we're dealing with legal entities here.

Attorney Barker: Sir, might I read this to you, this from our amended petition?

[fol. 461] The Court: Yes.

Attorney Barker: Paragraph 7. "On May 31st, 1962, at 8:00 p.m. at Saint Phillips Monumental Church on Park Avenue and Jefferson Street, where defendant Jaudon is pastor, there was a mass meeting of the National Association for the Advancement of Colored People and the Savannah Branch of the National Association for the Advancement of Colored People."

Attorney Gadsden: If Your Honor please, I think we—the Court's—attention to the fact that there hasn't been one bit of evidence educed here at this trial to show that W. W. Law or Reverend Jaudon acted under the auspices or direction or in concert with the New York office, that is,

the National Association for the Advancement of Colored People, Incorporated, and the only evidence that has been introduced here has been the circular, which is not conclusive in itself. There hasn't been one additional piece of evidence presented to this Court, and no agency has been established, sir.

(Pause.)

Attorney Gadsden: If I may, Your Honor, call to the Court's attention, read from the law of agency here, declaration by agent: "Declaration of a mere agent, standing alone, are not sufficient to prove agency, but declarations [fol. 462] of a general agent made, while in employment of defendant, are admissible to prove agency." But as we have here, Your Honor, a statement by attorney for petitioner that there was only a statement by W. W. Law, which stands alone without any corroboration, which is not sufficient within itself to prove the agency on behalf—on the part of the National Association for the Advancement of Colored People, Incorporated. With reference, Your Honor, to the petition, we respectfully submit that this is merely an allegation and not proof within itself without evidence to sustain it.

The Court: I'll get the reporter to play his testimony back.

Note: (At this point the testimony requested was reproduced for the Court. The jury was then called back into the courtroom and court was recessed for the day.)

[fol. 463] (Third day.)

Note: (The jury withdrew from the courtroom.)

Attorney Mayfield: If Your Honor please, I—

The Court: Just a minute, if you don't mind. They are verifying one of their amendments. As I understand, a pleading can be verified at any time.

(Pause.)

The Court: All right, Mr. Mayfield.

Attorney Mayfield: If Your Honor please, as suggested yesterday by the Court, we are tendering—or filing herewith the written motions for non-suit as to each and every defendant separately, sir.

The Court: All right.

(Pause.)

Attorney Barker: May it please the Court, the plaintiff has a motion when the Court would entertain one, sir.

(Pause.)

The Court: The Court has considered the matter of the motion for non-suit on all the grounds made, and as the Court has already allowed evidence to prove a conspiracy—conspiracy, of course, not being the gist of this action, but the matter of inducement, and conspiracy can be proven by direct or circumstantial evidence—the question of agency is [fol. 464] so closely tied with the question of conspiracy that in order to be consistent with its rulings, the Court will have to overrule the motion for non-suit. It's a very close point.

Attorney Mayfield: Would the Court indicate please whether or not the order of the Court relates to each and every defendant?

The Court: To each and every defendant.

Attorney Hollowell: If it please the Court, we would like to further for the record make a motion at this time for a directed verdict in favor of each of the named defendants in this case and on the grounds as they have been enumerated in the motion for non-suit. We would be prepared to argue that. We want the record to show that we are making such a motion, and rather than enumerate again those grounds, we want to have the record show that we are adopting the grounds as enumerated in the non-suit as the basis for the motion for a directed verdict in behalf of each of the defendants.

The Court: I don't need to hear from the other side. Having overruled the motion for non-suit, I certainly would be inconsistent if I directed the verdict.

Attorney Barker: The motion that I was going to ask you to entertain a moment ago, sir, is withdrawn because [fol. 465] there would be no necessity.

* * * * * * *

[fol. 480]

TESTIMONY OF W. W. LAW

Q. Now, Mr. Law, you know that the plaintiff in this action has alleged that this was some type of conspiracy which was engaged in between you and defendant Reverend Jaudon, the Savannah Branch of the NAACP, the Georgia State Conference, and the national organization itself. Now I would like for you to state for the Court and jury whether or not any such conspiracy existed between the organizations that I have mentioned?

A. There was no thought of conspiracy, none intended. We were engaging what is normally the kind of protest that we feel necessary to engage in all throughout the country.

Q. State whether or not any of the other organizations that I mentioned were aware or had any knowledge—

A. Had no knowledge, none.

* * * * * * *

[fol. 496] Q. At a later date did you have a meeting of your Executive Committee?

A. We did.

Q. They—did they approve and ratify the acts taken by you and Reverend Jaudon and the secretary at the meeting of the National Association for the Advancement of Colored People at Saint Phillips Monumental Church?

A. At that time they gave their approval to the action taken by the meeting.

Q. And did they give approval—was it in a formal meeting?

A. They gave approval, yes.

Q. In a formal meeting?

[fol. 497] Yes.

* * * * * * *

[fol. 499] Q. You went into the purpose of the NAACP a moment ago. To join the NAACP do you have to pay dues or a membership fund?

A. Yes, you pay a fee.

Q. What would be the fee to join the NAACP?

A. Well, you could join for two dollars, three fifty, five, ten.

Q. Now what would these figures represent?

A. Dollars.

Q. No. What would they represent—would they—do you retain the money?

A. A portion of it remains in the Branch; a portion goes to the national office.

Q. A portion goes to the National Association for the Advancement of Colored People, a New York corporation?

A. This is true.

Q. Would that also make me a member of the National Association for the Advancement of Colored People, a New York corporation?

[fol. 500] A. It would.

Q. Are the local members of the NAACP members of the National Association for the Advancement of Colored People, a New York corporation?

A. They are.

* * * * * * *

[fol. 591] Attorney Gadsden: We rest, may it please the Court.

Attorney Barker: The plaintiff closes and waives the opening argument with the reservation to make the closing argument.

Colloquy on Motion for Directed Verdict and Denial Thereof

Attorney Hollowell: If it please the Court, in advance of that, we want to renew our motion.

The Court: All right. The jury will retire.

Note: (The jury retired to the the jury room.)

Attorney Hollowell: If it please the Court, we would like to renew our motion for non-suit and, also, renew our motion for a directed verdict—

[fol. 592] The Court: Well, it's too late to make a motion for non-suit.

Attorney Hollowell: Yes, I agree with you; only for the directed verdict. We already have the motion for the non-suit as a matter of record. We move for a directed verdict on the grounds that the plaintiff has not carried the burden which is upon it to make a sufficient prima facie showing in order to establish that it would be—or he would be entitled to a judgment against the individual defendants, the Association, nor the corporate defendant. This is based upon the grounds, Your Honor: number one, that there has not been a conspiracy shown for the purpose of destroying the business of the plaintiff, which is an allegation which was made by the plaintiff in this particular case. There has been no such showing. There has been no showing that there was any conspiracy in which the National Association, a New York corporation, was a part of. There has been no showing that there was an agency relationship between the National Association and any of the associations, unincorporated associations, or the named defendants. There has been no showing that any of the defendants were engaged in any conduct which would give rise to a conspiracy, nor has there been establishment in [fol. 593] an amount that would be necessary to show that any of the defendants at any time were engaged in conduct which was illegal and which gave rise to damage to the particular plaintiff. As a matter of fact, I would submit that the conduct of the persons who have testified as to membership in the organization and those who are the individual defendants would indicate that their conduct was at all times proper, that they did not at any time do anything themselves which would cause them to be legally responsible for any damage which might have arisen on

the part of the plaintiff here. And for these reasons, Your Honor, we submit that a verdict ought to be directed in favor of each of the defendants, the corporate defendant, the two associations which are unincorporated, and the named defendants, and we ask the Court to so rule.

The Court: The motion is overruled.

* * * * * * * *

[fol. 597]

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

CHARGE OF THE COURT

[fol. 598] I am going to yield to the temptation to begin this charge with the old legal cliche that has probably been worn threadbare, but I believe applicable in this case, to wit: the purpose of all legal investigation is to ascertain the truth. It is your duty in this case, as far as you can determine from the evidence as produced on the witness stand and from the applicable law as will be given you in charge by the Court, to the best of your ability to ascertain the truth between the conflicting contentions of the parties and render a verdict accordingly.

The plaintiff's petition consists of some twenty-three paragraphs, and he has amended some of them. The first amendment filed by the plaintiff was filed on the first day of February, 1963, and is backed in blue paper. The original petition is backed in white paper. This amendment, briefly, is an expansion and amplification of certain paragraphs of the original petition. Then again the plaintiff, at the beginning of the trial on November 12th, filed an additional amendment, which dealt with one subject only, and amended his petition, as heretofore amended, in regard to paragraph nineteen. That is the paragraph setting out damages. The Court, in allowing this amendment,—and you can see by the order on the back of it—struck that portion of the amendment which claimed salary for Mr. Overstreet and a salary for Mrs. Overstreet, as the Court did not consider those proper elements of damage.

And then again this morning the plaintiff filed another amendment, which is really insignificant in that it verified

—and you can verify a former pleading by swearing to [fol. 599] it. The plaintiff's petition is sworn to. The answer is not sworn to, but that makes no difference. If the plaintiff had objected to an unsworn answer he should have raised the objection before trial; and even if he had raised the objection, it would have been an amendable defect and could have been cured by adding the necessary affidavits.

The Court is going to attempt to summarize the petition. Ordinarily I read the petition paragraph by paragraph and each corresponding paragraph of the answer, but in the interest of time I am going to summarize the petition. The petition is brought against five parties defendant, and they are set out in paragraph two. They are the National Association for the Advancement of Colored People, a New York Corporation doing business in Georgia; they are the Georgia Chapter of the National Association for the Advancement of Colored People—which turns out by the evidence to be not an incorporated organization; and the Savannah Branch, National Association for the Advancement of Colored People, being an affiliate of the National Association for the Advancement of Colored People, a New York Corporation doing business in Georgia, said defendants having a place of business in Chatham County, Georgia; and W. W. Law, individually and as President of the Georgia and Savannah affiliates of the defendant corporations, and who is agent in Chatham County, Georgia, for the defendant corporations; and Rev. F. D. Jaudon, individually and as Vice-President of the Georgia and Savannah affiliates of the defendant corporations, and who is an agent in Chatham County, Georgia. The suit alleges that the defendants, the individual defendants—that is, the two persons, Law and Jaudon, are residents of Chatham County, Georgia.

[fol. 600] Now the defendants, as listed, all five of them —and they are in these light blue backs—filed separate but identical defenses. At the back of the answer you will find what is called demurrers; you pay no attention to those because they raise issues of law and the Court has already

ruled on those and they are not before you. But each defendant categorically denies the second paragraph; denies at least the agency alleged therein.

Then after alleging the defendants are subject to the jurisdiction of the Court, they set up that this is a class action. A class action is simply an action where one of a certain organization or a class or a few are sued rather than all the members of the class. And they set up that in this law suit that the members of this class have acted in concert with the defendants in the activities hereinafter described and have been acting in a conspiracy and under the direction of the defendants, and particularly under the direction of the individual defendant W. W. Law. That—I believe I will get one of the answers—paragraph is denied.

Then the petition states that it is brought for injunctive relief and for damages. Then it proceeds to outline them —and a petition is an outline—of the facts concerning which you have had evidence produced before you. That a fourteen year old boy was employed by the plaintiff; that he was discharged for allegedly stealing; and that he came back to the plaintiff with a policeman to the store, and afterwards a warrant was sworn out; that a mass meeting was held on May 31st. The day of the alleged assault upon the boy and the alleged discharge was May 30th. That on May 31st a mass meeting was held in Jaudon's Church, and at this mass meeting it was decided by the [fol. 601] group to put on a selective buying campaign to begin the following day, and that pickets were called for to assemble at the plaintiff's place of business; that the purpose of the pickets was to stop customers and prospective customers of the plaintiff's who were on the way to the plaintiff's store to trade and turn them back and keep them from trading or giving the plaintiff the benefit of their patronage; and that this picketing was brought about by the conspiracy heretofore alleged between the defendants; and that the picketing intimidated and influenced the customers and prospective customers of the plaintiff so that they would not trade; and that in this way, through

the atmosphere of intimidation, coercion, that the plaintiff's business was lessened and destroyed. They allege that Law, as the leader of the pickets, was instrumental in placing the pickets adjacent to the business and advising them at what hours to picket and the method of approach to be taken in talking to plaintiff's customers and prospective customers. They not only allege that customers were turned away but threats were made to prevent the plaintiff's employees from continuing in his employ. And it is alleged that the charges made against the plaintiff were false and spurious accusations and were not true; and that all of this caused the plaintiff's customers to be fearful of trading in plaintiff's store; and that as a result of this, plaintiff's business was lessened; there was no labor dispute between the plaintiff and any of the defendants; and it is alleged that the establishment of the picket line amounted to a boycott.

Now generally the answer of all the defendants denies this. Where they don't have the information as to what [fol. 602] took place they neither admit nor deny it but call for strict proof.

Now these roughly are the issues made by the pleadings. Now you will have the pleadings out with you in the jury room. You can read them, not as evidence, but to ascertain the contentions between the parties; that is, the issues. There are certain issues made by the pleadings in this case, and there may be collateral issues that arise in the evidence and from the conflicts in the evidence. The plaintiff alleges a conspiracy; the defendants deny it. The plaintiff alleges that the boy employee was not beaten; the defendants deny it in the pleadings and contend in the evidence that he was beaten, he was struck and assaulted. The plaintiff alleges that as a result of this conspiracy certain overt acts—or overt acts were commited by the conspirators and by those incited by the conspirators, and that these acts resulted in damage to the plaintiff.

There has a great deal been said in this case about the burden of proof. The burden of proof generally lies upon

the party asserting or affirming a fact, to the existence of whose case or defense such fact is essential. The burden of proof in this case lies upon the plaintiff to prove by the preponderance of evidence the allegations of his petition; that is, the conspiracy, the agency, the overt acts, and the damage, and that the conspiracy was carried out unlawfully, without legal excuse, or was carried out in an unlawful manner. Now the burden lies on the plaintiff to prove those things. The burden further lies on the plaintiff to prove the elements of damage for which he seeks recovery. The burden lies on the plaintiff throughout the case.

[fol. 603] Now this is a civil case, as distinguished from a criminal case. In all civil cases the preponderance of evidence is considered sufficient to produce mental conviction. By a preponderance of evidence is meant that superior weight of evidence upon the issues involved which, while not enough to wholly free the mind from a reasonable doubt, is yet sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other. In determining where the preponderance of evidence lies the jury may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity for knowing the facts to which they testify, the nature of the facts to which they testify, and the probability or improbability of their testimony their interest or want of interest—that is, in the outcome of the case—and also their personal credibility so far as the same may appear from the trial. The jury may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Under the law of Georgia the Court cannot tell you what he thinks the evidence proves or doesn't prove. He cannot tell you what weight you shall give to evidence or shall not give to evidence. He cannot tell you whom to believe and whom not to believe.

By credibility of witnesses is simply meant whether a witness is worthy of belief; are you going to accept his

testimony. If, upon consideration of the evidence in this case, you find there is conflict in the testimony between the witnesses or a conflict between the witness or witnesses, it is your duty to reconcile this conflict, if you can do so, without imputing perjury to any witness; and if you cannot [fol. 604] do so without imputing perjury to any witness, then it becomes your duty to believe the witness or witnesses you may think best entitled to belief. And you may consider their interest or want of interest in the result of the case, their bias or prejudice if any appears, and the reasonableness or unreasonableness of their statements that they may make, their familiarity with the facts that they testified about, the personal credibility of a witness so far as the same may legitimately appear upon the trial of the case, but the jury, as stated, are the last, sole and exclusive judges of what witness or witnesses they shall believe or disbelieve and what testimony they shall credit or discredit.

Ordinarily there are three ways of impeaching a witness. One of them, which is not applicable in this case—because there has been no evidence that any witness is unworthy of belief; that is, by another witness who swears that he knows the reputation of the witness for truth and veracity. There has been no evidence of that type, that a particular witness on either side is unworthy of belief. To impeach a witness is to show to the satisfaction of the jury that the witness is unworthy of belief. A witness may be impeached: first, by disproving the facts testified to by him. As this Court interprets that section of the Code, it simply means that you accept the evidence of another witness or other witnesses as more creditable. By proof of contradictory statements made previously by him as to matters relevant to the testimony and to the case. By evidence of his general bad character. That is not in this case at all. If it is sought to impeach a witness by proof of contradic- [fol. 605] tory statements previously made by him as to matters relevant to his testimony and to the case, the witness's attention shall be called to the time and place where

the statement was made. Whether such a witness is impeached by contradictory statements, of course, is for the jury. There has been no effort in this case to impeach witnesses by statements made out of Court, but there has been an effort upon the part of counsel for both sides on cross examination to shake the witness's testimony or impeach it by getting him to make contradictory statements from the stand or attempting to get him to make contradictory statements from the stand. You heard the evidence, the direct examination and cross examination of all the witnesses, and it's for you to determine whether any witness's testimony has been discredited in this manner so as to render it unworthy of belief. When a witness shall be successfully contradicted as to a material matter his credit as to other matters shall be for the jury, but if a witness shall swear willfully and knowingly false his testimony shall be disregarded entirely, unless corroborated by circumstances or other unimpeached evidence; whether the credibility of a witness has been shaken being a matter entirely for your determination.

Direct evidence is that which immediately points to the question in issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining by their consistency the hypothesis claimed. Of course, in this case you have had both types of evidence, direct and circumstantial evidence. In a civil case if the plaintiff is relying upon circumstantial evidence, before he would be authorized to recover or establish the [fol. 606] issue, the testimony must be such as to reasonably establish the theory relied upon and to preponderate to that theory rather than to any other reasonable hypothesis. If circumstantial evidence is relied upon and the facts proven should be consistent with either of two opposing theories they would not be regarding as proving either. The comparative weight of circumstantial evidence and direct evidence on any given issue is for the jury.

We have in this case, at least in one instance, what is termed as expert evidence. That was the testimony of the

accountant who testified. The law allows to be introduced in evidence books of a business or a concern that are kept in the regular course of business whether the entries made in those books are made by the party who performed the act or are made by a party who gets it, the information, from another party who performed the act about which the entry relates; provided, of course, the Judge finds that the book was made in the usual course of business. There is such evidence before you in the nature of a book which was testified to. You heard the testimony relating to that. It is like any other testimony; you can either accept it or reject it or give it such weight as you see fit. The law also allows a Certified Public Accountant or an Accountant to summarize facts shown by many books and records, provided the books and records are made available to the opposite party. There was evidence in this case as to what the summary of certain books showed.

Now the law also provides that where several people are charged with a tort—and tort means wrong—that the [fol. 607] plaintiff may sue one or all, and the plaintiff may recover against one or all or may recover against a certain number of the tort feasors and not against others. This suit was brought for a wrong, alleged wrong, and it is in the province of the jury, as judged by the evidence, to allow a recovery against all or against some of the defendants. You would not necessarily have to find in favor of—against all of the defendants and you would not necessarily have to find in favor of all of the defendants. You can find against some or in favor of some or you can find, of course, against the plaintiff; because a recovery can be had against one or more than one.

Now the plaintiff alleges in this case that there was a conspiracy. Now a conspiracy is defined in law as a combination between two or more persons to accomplish an illegal purpose or to accomplish a legal purpose by illegal means. The elements of conspiracy are the combining together of two or more persons for the purpose—that is the object—of doing something unlawful or oppressive or

immoral in itself or as means to an end. Where civil liability for conspiracy is sought to be imposed, the conspiracy itself furnishes no cause of action, but the gist of the action is the damage done as a result of the conspiracy, and not the conspiracy; it is the tort committed against the plaintiff and the damage thereby wrongfully inflicted; and all of the conspirators, whether they actually participate in the wrong or counsel or advise it, are held liable on the theory that any conspirator or one of the conspirators is the agent for the other conspirators. Now conspiracy of itself is difficult to prove and the law allows great latitude. You don't have to prove an express agreement in writing; you don't have to prove an express oral [fol. 608] agreement. A conspiracy may be shown by a tacit understanding between individuals. It may be shown by a common design to accomplish an object or a purpose, and by the fact that the individuals act in accordance with this common design. It can be shown by circumstantial and indirect evidence. And one of the points in this case is, was there a conspiracy—that's one of the issues—between these defendants. Did they meet and conspire? Did the scheme of what they were going to do evolve out of the meeting? Did they all participate in it? And did the conspiracy result in some act being done to carry out that common design, to carry out the purpose of the design; and the purpose of the design must be illegal or it must—if it is legal, it must be accomplished by illegal means. Now the defendants contend in this case that there was no conspiracy. You are to look to the evidence and determine that.

The National Association for the Advancement of Colored People, a New York Corporation, is a foreign corporation and it can only be represented in Georgia by agents, and the agents must conduct themselves in a manner that is compatible with the purposes of that organization. You have heard the evidence as to the organization. It is not an ordinary business organization, in that sense. It is an organization to cover certain activities, as explained on the

witness stand, activities for the advancement of colored people as they contend to protect them in their constitutional rights and in their rights as citizens. Now did the National Association for the Advancement of Colored People have an agent in Savannah? Who was that agent? Was [fol. 609] it W. W. Law? Was it the Savannah Branch of the National Association for the Advancement of Colored People, as an affiliate? Is the National Association responsible for what this affiliate does? Or is the Georgia Conference—I believe they call it—is it responsible for what the affiliate does? Are they so connected that one is responsible for the act of the other by reason of the agency; by reason of their concerted activities as expressed in this conspiracy? As the Court sees it, you can't get agency and conspiracy separated in this case. A corporation may be a member of a conspiracy if its officers and agents take part in it and it furthers the conspiracy. You look to the evidence and see if it preponderates as to these organizations. Was there an agency that bound the National Association for the Advancement of Colored People, a corporation; was there such an agency? Did they participate through their agents and members and people who had a right to bind them in this conspiracy? Was this conspiracy carried out by members of the local organization? Was what took place a result of their activities and the placing of the pickets at the various corners? I don't think—and I charge you—that the mere fact that there had been protests made before the meeting of the Association, there had been indignation expressed by a group of people, and certain action taken, would not prevent the Organizations or the parties from conspiring. They could have joined the movement and been just as guilty of a conspiracy as if they had initiated it. But did they do it? Those are the facts for you to determine. Now was the purpose of the conspiracy legal or illegal? Did these people have a right as a result of an individual altercation, of an altercation [fol. 610] between two individuals, however unjust it might have been or appeared to have been, did they have the right

to take concerted action against the individual who is alleged to have committed the abuse? You are to determine that from the evidence and from the further matters that will be given you in charge. It is a matter for your determination whether there was a conspiracy, whether the people engaged in it have bound the principals that are alleged to have been engaged in it, whether overt acts were done in the advancement of the conspiracy or incited by the pickets placed so that what was done could be traced as a result or the proximate cause of the picketing and of the conduct of the parties, and did this act or these acts result in damage to the plaintiff in the case. You are to determine that.

Now proximate cause may be defined as an act or an omission which immediately causes the injury. It is the efficient cause without which the injury would not have resulted. It is not necessarily the sole cause, but as a result of its action a chain of events is set in motion bringing about the evil result without the intervention of an independent active efficient cause. One of the defenses of the defendants in this case is that if they had pickets they were peaceful, their instructions were peaceful, they made only persuasive statements, and that they are not responsible for what other people did by reason of the fact that they happened to be there at the same time, or they happened to come along. I charge you that in this case you can consider the effect of the picket. Did the pickets incite—were the fact that the pickets were there incite activity upon people who were not at all connected with the organi-
[fol. 611] zation; and if that was incited by the pickets, by their mere presence, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted. But if that was an entirely independent efficient cause that had nothing to do with the pickets, if you find that was true, of course the pickets nor the organizations who placed them there could be held responsible. So you have to determine. Proximate cause is always a question of fact for the jury.

Picketing can be more than free speech since it involves patrol of a particular locality and since the very presence of picket lines may induce actions of one kind or another quite irrespective of the nature of the ideas which are being disseminated. Publication in the newspaper or by distribution of circulars may convey the same information or make the same charges as do those patroling a picket line, but the very purpose of a picket line is to exert influence and it produces consequences different from the modes of ordinary communication. A judicial theory of peaceful picketing is a form of free speech which cannot be stretched to shield malevolent picketing for the purpose of aiding an unlawful boycott. A person or a combination of persons cannot employ a lawful act for spite and solely for the purpose of injuring another. Such malicious purpose renders the act unlawful. The right to peacefully picket cannot be interfered with by Courts unless the picketing is for an unlawful purpose. If it is for an unlawful purpose, it can and should be enjoined.

The law recognizes the intrinsic difficulty of proving a conspiracy. The allegations with reference to a conspiracy [fol. 612] are treated as matters of inducement leading up to a more particular description of the acts from which the conspiracy may be inferred. Less certainty is required in setting out matters of inducement than in setting out the gist of the action. The conspiracy may sometimes be inferred from the nature of the acts done, the relations of the parties, the interest of the alleged conspirators, and other circumstances. To show conspiracy it is not necessary to prove an express compact or agreement among the parties thereto. The essential element of the charge is the common design; it is sufficient that two or more persons in any manner, either positively or tacitly, come to a mutual understanding that will accomplish an unlawful design.

Every agreement between two or more persons to accomplish a criminal or unlawful object, or a lawful object by criminal or unlawful means, is an unlawful conspiracy, and any person whose rights are injured by acts done in

furtherance of such conspiracy has his action at law for redress in damages.

Conspiracy is the combination of two or more persons to do: (A) Something that is unlawful, oppressive, or immoral; or (B) Something that is not unlawful, oppressive, or immoral, by unlawful, oppressive, or immoral means; (C) Something that is unlawful, oppressive, or immoral, by unlawful, oppressive, or immoral means.

If you should find from the evidence—that is, the preponderance of the evidence—that those who conspired in having the picketing and boycott put in effect were not actual participants therein and not actually present and participating in the act, you can nevertheless find such [fol. 613] persons as conspirators responsible for any damage which you might find has been done.

A corporation may be a party to a combination or a conspiracy with other corporations or persons which aims at and accomplishes injury to other corporations or persons and may be held civilly liable for the resulting damage to the extent as a natural person.

A boycott is a combining of many persons to cause loss to one by coercing others against their will to withdraw or withhold their beneficial business intercourse from him by the use of such means as the infliction of physical injury on their persons or property—and there is no evidence in this case, I charge you, as to physical injury as to persons—or such intimidation as will put them in fear of such injury, through fear of incurring the displeasure, persecution, and vengeance of the combination. Now you have heard the evidence as to intimidation and coercion. Did the picketing create an atmosphere of fear? Did it intimidate or coerce people not to trade with the plaintiff? You determine that from the preponderance of the evidence.

An essential element of boycott is an intent to injure. So also intimidation and coercion are essential elements in a boycott. In the present acceptance of the term, violence is not an essential element. It is sufficient that the means are intended and are such as naturally tend to overcome

the will of others and to compel them to do that which they would not otherwise do; and the extent of this fear need not be object, but only such as to overcome their judgment, or induce them to do or not to do that which they would have done or left undone.

[fol. 614] A person's business is property in the pursuit of which he is entitled to protection from tortious interference by a third person, who, in interfering therewith, is not acting in the exercise of some right.

Now on the other hand, there is such a thing as peaceful picketing; there is such a thing as persuasion, peaceful persuasion. I charge you that peaceful picketing is a form of free speech which is protected by the fourteenth amendment to the Constitution of the United States. It is a means of conveying information on matters of concern to an aggrieved group and to the public in general and is protected by the due process clause of the fourteenth amendment of the Constitution of the United States. Therefore, if you find that the defendants were engaged in peaceful picketing for the purpose of conveying information to Negroes and to the public in general as to an alleged injustice perpetrated by the plaintiff upon a Negro employed by him and requesting that Negroes withhold their patronage from the plaintiff's place of business, then such conduct would be protected by the due process clause of the fourteenth amendment and it would be your duty to find in favor of the defendants.

I charge you further in this connection while the dissemination of information in the form of free speech is protected, it must be true information. The fourteenth amendment of the Constitution of the United States does not protect falsity. One of the issues in this case is did the beating of the boy occur as contended by the defendants; did it take place or was it just a figment of imagination. If it didn't take place, then the representation that it did [fol. 615] take place would be false. Now if the people honestly believed it took place, you could consider that

in mitigation of their act. If one acts upon information he believes to be honest and true, his liability would be quite different from where he acts upon information he knows to be false. Were these pickets set out for the purpose of protecting Negroes, for bringing to light mistreatment of Negroes? Was it false, knowingly false, or was it believed to be true by the Negroes? You can take all those matters into consideration. Did they have a right to do it? There was an altercation between two individuals. Did the Negro people as a group—there's only one altercation shown by the evidence—did the Negro people as a group have a right to take this up and were they justified in so doing? That's a question of fact for you to determine.

I charge you that where the object of picketing is to enable those responsible for the welfare of others to fulfill their duties, then such picketing is privileged.

If you find that the defendants were acting in behalf and at the request of an employee of the plaintiff who had suffered an injustice by the plaintiff and that such action took the form of peaceful picketing, it would be privileged and it would be your duty to find in favor of the defendants.

I charge you that questions concerning the exercise of freedom of expressions are not resolved by mere reference to the fact that private property is involved or that a business will lose profits.

If you find that the defendants were exercising their [fol. 616] right to freedom of speech by peaceful picketing and conveying information concerning plaintiff's alleged injustice to a Negro employee, then such action would be protected by the due process clause of the fourteenth amendment to the Constitution of the United States. Under these circumstances it would not matter that the plaintiff had a private property right involved or that the plaintiff's business might lose profits and it would be your duty to find in favor of the defendants.

I charge you that unless you find, from all of the credible evidence, that the defendants, pursuant to a conspiracy, illegally damaged the plaintiff generally, nominally or

specially, there could be no punitive damages to the plaintiff.

If the damages to the plaintiff are only the imaginary or possible results of tortious conduct, or if other and contingent circumstances preponderate largely in causing the injurious effect, such damages are too remote to be made the basis of recovery against the wrongdoer.

Before the plaintiff can recover, you must be satisfied that the preponderance of the credible evidence in this case showed that the defendants conspired to unlawfully injure plaintiff in his business and by illegal acts did in fact injure him.

There can be no recovery for conspiracy alone. In other words, you can conspire but if you don't do something to carry out the conspiracy why no harm is done anybody.

Now this brings us, I believe, to the question of damages. Damages are given as compensation for injury done, and generally this is the measure where the injury is capable [fol. 176] —is of a character capable of being estimated in money. In other words, in awarding damages you seek to compensate for a loss that has been established; that is, in a case of this kind. I have already charged this section: If damages are only the imaginary possible result of a tortious act, or other and contingent circumstances preponderate largely in causing the injurious effect, such damages are too remote to be the basis of recovery.

Direct damages are those—are such as follow immediately upon the act done. Consequential damages are such as are necessary in connected effect of the tortious act, though to some extent depending upon other circumstances.

In this case the defendants contend, at least in part, that the loss of profits alleged to be suffered and to have been proven were not altogether due to any tortious act, but were due to competition across the street by another market. You can consider all of those things in determining whether there are damages. Did the other market—was it solely the cause, or did this damage follow the tortious act. Even

though there may have been other contingent matters affecting it, but was the real cause of it the alleged tortious conduct and was that conduct proven by the preponderance of the evidence.

In every tort there may be aggravating circumstances, either in act or in intent, and in that event the jury may give additional damages either to deter the wrongdoer from repeating the trespass or as compensation for wounded feelings of the plaintiff. I charge you that exemplary or punitive damages are damages on an increased scale awarded to the plaintiff over and above what will com- [fol. 618] pensate him for his property loss, and where the wrong done to him was aggravated by circumstances of violence, oppression, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of feelings, shame, degradation, or other aggravations of the original wrong, or to punish the defendant for his evil behavior or to make an example of him, for which reason they are called vindictive damages or smart money.

Now I charge you that one has a right to do business, and that right is a property right; and if that right is interfered with he can recover damages.

The good will of an established business has a value, and if the good will is destroyed by a tortious act the plaintiff would be entitled to recover for that act.

In this case you have had evidence as to the loss of profits for two specific periods in comparison. Now whether the plaintiff would have continued to do business or whether he would have done business for the length of time he testifies that he would do business, of course, is to some extent speculative. Whether he would or would not is for your determination. Whether he would have lived that long is for your determination. You have seen it. There is some evidence perhaps—at least there is the view of the plaintiff as to his expectancy. Would he live out that time? Would he continue to do business there for that length of time even though he would lose money? The plaintiff is supposed to lessen his damages rather than increase them. You take

all these things into consideration. If there is, in your opin-
[fol. 619] ion, no probability that he would have continued to do that business for that length of time, why you would not award him damages for good will. If there is a real possibility that he would do it, well then you could consider the matter of good will. Now the amount, of course, would be fixed and determined by you.

Now I don't want to be—fall into the habit that Judge Scarlett said, that the State Court judges talk too much, as reported in the morning paper. I think I have essentially covered the liability and the damages in this case, and I am not going to burden you with expanding on what a boycott is and what a conspiracy is and all the various elements that might enter into it.

The first thing for you to do is to establish whether there was a conspiracy; who participated in the conspiracy; were they bound by their participation; did they have agents there that would bind them as to the conspiracy; what was done to carry out the conspiracy; and if what was done was done by the conspirators or by their organization, by members of the organization, or by others who were attracted there; was it all a result of the picket line being put out there as a part of the conspiracy; what overt acts were done and what damages resulted; was it a conspiracy for an illegal and unlawful purpose and carried out by unlawful and immoral means, or was it for an unlawful purpose. You determine that. Was there a right of the conspirators in this case to do what they did and for the purpose, or was it just done maliciously for the purpose of oppressing and injuring? You determine those facts by the preponderance of the evidence, and I repeat it: That means that weight of evidence, while not wholly free from a reasonable doubt, is [fol. 620] still sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other. Did these acts proximately cause the injury of which the plaintiff complains, the injury and damage, or did certain other things come in and contribute to them? Do other improbable things—other things not flowing from this, other con-

tingencies; did they preponderate and cause it? In other words, are the damages consequential; do they naturally and normally follow though there might be some interruption from other things? Are they just too remote? Are they imaginative? You determine that from the preponderance of the evidence.

Now the prayers of the petition—and I did not summarize them at first—the prayers of the petition are first for a permanent injunction. I might say that the plaintiffs have already been enjoined, but that is temporary. It is for you to determine whether they—I mean the plaintiff has already gotten a temporary injunction against the defendants, that has been in force during the time that the litigation was pending. You determine from this evidence, and as given you in charge, are the plaintiffs entitled to a permanent injunction or are they not. And then the plaintiff prays for damages. Those are set out in the amendment filed at the beginning of the trial on the 12th; that is, compensatory damages for a period of one year and five months, I believe is the period alleged. Is he entitled to those damages? Do they result from wrongful acts committed as a result of the conspiracy and the conduct of the conspirators and others incited by them? Then is the plaintiff entitled to loss of good will in the community, the loss that he suffered by reason [fol. 621] of his business standing as a merchant and the operator of the market being hurt for any period of time, and if so how much? And then was any wrong, if any you find were committed, done with malice and with intention to hurt without any reasonable—reason or justification? There is no rule laid down for punitive damages. You can't measure them. They are left to the enlightened consciences of impartial jurors, enlightened by all the facts and circumstances of the case. These are the matters, as I see it, for your determination; and determine them from the evidence as from the witness stand, not from any prejudice or bias or fact that the case is between members of different races. Limit it to the evidence from the witness stand.

Now there being several defendants sued in this case, there may be a possibility of several verdicts. You can find against all of the defendants; you can find in favor of all of the defendants. You can find against some of the defendants and in favor of others. Now in telling you of the form of your verdict the Court is not intimating how you should find. There are a number of verdicts possible in this case: A verdict in favor of the plaintiff against all of the defendants; a verdict in favor of the plaintiff against some of the defendants; a verdict in favor of all of the defendants; or a verdict in favor of some of the defendants. You could combine three and four.

There are three things which your verdict must cover. First, whether or not a permanent injunction shall be granted; second, whether or not compensatory damages shall be given; and third, whether or not punitive damages shall be given. Now if you find, after considering the [fol. 622] evidence—and I am not indicating how you should find—if you should find that the plaintiff is entitled to recover against all of the defendants, after you have considered all of the evidence, the form of your verdict would be: We, the jury, find in favor of the plaintiff and against the defendants, using the plural form. Then you would have to go on and determine further whether the plaintiff is entitled to an injunction. If you find that the plaintiff is entitled to a permanent injunction: That the plaintiff is entitled to the grant of a permanent injunction. And if you find damages—and you can find for the injunction without the damages: We, the jury, find in favor of the plaintiff and against the defendants in the sum of blank dollars compensatory damages; and in the further sum of blank dollars as punitive damages. If you find in favor of the plaintiff and against some of the defendants, you would name those defendants and follow through as to whether or not the injunction should be granted and the amount of damages, compensatory or punitive. The form of your verdict in that case would be: We, the jury, find in favor of the plaintiff

and against the defendants, and you would name the particular defendants, and then you would specify the amount of damages, compensatory or puntive. I think that would be the equivalent of finding in favor of the particular defendants you didn't find against, but if you feel that you should go further and state it: We the jury, find in favor of the defendant or two or three or whatever they are. Then if your verdict is in favor of all of the defendants, you just simply: We, the jury, find in favor of the defendants and against the plaintiff. Of course, these forms are a. [fol. 623] little confusing. If you need further instruction on them, I will see if I can't agree with counsel as to some type of forms to submit to you. But whatever your verdict is, it should be signed and dated by your foreman.

Now you will have out with you all the evidence, all the pleadings, and I might state this: I am sorry to have taken so long. You can't disperse now. If you care to go to supper—and I am not suggesting that you do or you don't—notify the bailiff.

Mr. Dickey: May I approach the bench?

The Court: Yes.

(Conference between Court and counsel)

The Court: I may instruct the jury that all compensatory damages—and that would include damages for loss of profits, if you think the profits have been proven, if you reach that conclusion—and for damage to the good will, the loss of good will, those would be lumped together and included as compensatory damages; that is, if you find any. Then you would find, as I have charged you in this case, if proven, punitive damages separate.

Now your verdict, in whatever form it takes, I suggest you write it on the original petition, which is this white paper. There is plenty of room on both sides. You may retire and consider your verdict.

[fol. 624]

IN THE SUPREME COURT OF GEORGIA

Docket No. .....

Chatham Superior Court

Writ of Error From the Superior Court of Chatham County, Georgia

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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: REVEREND F. W. JAUDON and W. W. LAW, Plaintiffs-in-Error,

vs.

HALDRED OVERSTREET, Defendant-in-Error.

EXCERPTS FROM BILL OF EXCEPTIONS

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Georgia:

Be It Remembered, that on the 12th day of November, 1963, at the regular September Term, 1963, of the Superior Court of Chatham County, Georgia, before Honorable Edwin A. McWhorter, presiding, there came on to be tried the case of Haldred Overstreet, Plaintiff, vs. National Association for the Advancement of Colored People: Georgia State Conference of Branches, National Association for the Advancement of Colored People; Savannah Branch, National Association for the Advancement of Colored People; Reverend F. D. Jaudon and W. W. Law, Defendants, same being Case No. 2978 in said court, and same being an action for an injunction and an action for damages for injury to plaintiff's business interests.

Be It Further Remembered, that the trial of said case proceeded, a jury was selected, evidence was introduced by plaintiff and defendants, and after argument of counsel and the charge of the court in said case, the jury returned a verdict finding in favor of the plaintiff by granting a permanent injunction against the defendants and by finding in favor of the plaintiff in the sum of Eighty-five Thousand, Seven Hundred Ninety-Three and 05/100 ($85,793.05) dollars, on which verdict judgment was rendered on the 18th [fol. 625] day of November, 1963.

Be It Further Remembered, that, within the time provided by law, and on the 21st day of November, 1963, defendants filed their motion for new trial in said case, which motion was assigned by order of the court for hearing on January 23, 1964. Hearing on said motion was thereafter regularly continued to April 20, 1964, when said motion was heard and taken under advisement by the Court.

Be It Further Remembered, that on April 17, 1964, defendants tendered an amendment to their motion for new trial, and tendered a brief of evidence and a copy of the charge of the court, all of which were duly approved by the court, and were ordered filed with the Court as a part of the record in said case on said date, and were held by the court for use in considering the said motion. Said motion for new trial, as amended, was considered by the court, and on October 9, 1964, the Honorable Edwin A. McWhorter, Judge of said court, passed an order overruling said motion for new trial, as amended, and denying defendants a new trial in said case. Said case thus illegally terminated.

Defendants make the following assignments of error, to-wit:

1. To the order of the Court dated June 20, 1963, overruling the general demurrer, special demurrers and the motion to dismiss, defendants then and there excepted, now except and assign error thereon as being contrary to law and say that the court erred in entering said order.

2. To the order of the court overruling defendants' oral motion for non-suit submitted at the close of plaintiffs' evidence as to defendants, National Association for the Advancement of Colored People, Inc., The Georgia State Conference of Branches, National Association for the Advancement of Colored People and the Savannah Branch of the National Association for the Advancement of Colored People, defendants then and there excepted, now except [fol. 626] and assign error thereon as being contrary to law and say that the court erred in entering said order, on the grounds that there had been no evidence introduced by the plaintiff which in the exercise of sound discretion by the Court justified submission of the case to the jury on the questions of fact.

3. To the order of the court dated November 14, 1963 overruling defendant, National Association for the Advancement of Colored People's motion for non-suit, said defendant then and there excepted, now excepts and assigns error thereon as being contrary to law and say that the court erred in entering said order, on the ground that there was not evidence elicited reasonably justifying the court retaining this defendant as a party to the case.

4. To the judgment of the court dated November 18, 1963, making the verdict of the jury the judgment of the court, defendants then and there excepted, now except and assign error thereon as being contrary to law and contrary to the evidence and say that the court erred in entering said judgment.

5. To the judgment of the trial court overruling their motion for new trial, as amended, the defendants then and there excepted, now except and assign error thereon as being contrary to law on each and all of the grounds of said motion for new trial, as amended, and say that the court erred in overruling said motion for new trial, as amended, on each and all of the grounds therein stated.

6. To that portion of the trial judge's charge to the jury which reads, "As the court sees it, you can't get agency and conspiracy separated in this case," (Charge—p. 12) the defendants excepted, now except and assign error thereon as being contrary to the evidence and contrary to law. Said statement was erroneous and not sound as an abstract principle of law in that, a) there was no definition given as to [fol. 627] "agency;" b) there was no clear, concise and legally correct definition of "conspiracy" given by the trial judge as a part of his charge which relates to the subject case; c) agency and conspiracy are not synonymous; thus, the said statement was also vague, indefinite and misleading to the jury and was therefore prejudicial to the plaintiffs interest in the case.

* * * * * * *

[fol. 628] The defendants, National Association for the Advancement of Colored People; The Georgia State Conference of Branches, National Association for the Advancement of Colored People; the Savannah Branch, National Association for the Advancement of Colored People, W. W. Law and Rev. F. D. Jaudon, name themselves as plaintiffs-in-error and name Haldred Overstreet as defendant-in-error herein.

And now, within the time provided by law, come plaintiffs in error, and assigning error on the judgment and ruling herein complained of as being contrary to law, and tender this their Bill of Exceptions to His Honor Edwin A. McWhorter, Judge of the Superior Court of Chatham County, Georgia, and pray that the same be certified to as provided by law, and be transmitted to the Supreme Court of Georgia, in order that the alleged errors may be considered and corrected by said Supreme Court of Georgia.

Plaintiffs-in-error show that the Supreme Court of Georgia has jurisdiction of this case for the reason that it involves the construction of the Constitution of the United States and that it involves a matter of equity, and is therefore a type of action of which the Supreme Court of Georgia and not the Court of Appeals of Georgia has juris-

diction as provided in Article 6, Section 2, paragraph 4 of the Constitution of the State of Georgia.

Robert L. Carter, 20 W. 40th Street, New York, New York;
E. H. Gadsden, B. Clarence Mayfield, 458½ W. Broad St., Savannah, Georgia;
Donald L. Hollowell, 859½ Hunter St., NW, Atlanta, Ga. 30314;
Attorneys for Plaintiffs-in-Error.

[fol. 629]

IN THE SUPREME COURT OF GEORGIA

22814

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE et al.,

v.

OVERSTREET.

OPINION—April 20, 1965

1. (a). Every individual has a natural right to pursue a lawful occupation and to conduct his business according to his own plans and policies, where he does not offend the law or unlawfully infringe upon the rights of others. A person's business is property in the pursuit of which he is entitled to protection from tortious interference by a third person, who, in interfering therewith, is not acting in the exercise of some right.

(b). Plaintiff's petition alleging that he was operating a lawful business in a lawful manner and had not infringed upon the rights of the defendants, and that the defendants formed a conspiracy to damage and destroy his business as punishment of him for allegedly beating a fourteen year old negro employee, by picketing his store, and did pursuant to the unlawful conspiracy organize and conduct mass picketing of his store, where large numbers of pickets

gathered around the premises, obstructed and interfered with the use of the public sidewalks and streets and en- [fol. 630] trance to plaintiff's store, harassed, intimidated and threatened customers who attempted to enter the store, and encouraged and induced the public to boycott his business and his employees to leave his employ, all of which was a part of the unlawful, wilful and malicious conspiracy to damage his business and to force him out of business, which did injure and damage his business, stated a cause of action for injunction and damages.

(c). Peaceful picketing for a lawful purpose is protected under the free speech provisions of the Constitutions of the United States and of Georgia, but mass picketing by use of force, violence, and intimidation, harassment and other like activities is not peaceful picketing such as enjoys constitutional protection, nor does the protection extend to malevolent picketing for the sole purpose of punishing one who is accused of committing an assault and battery upon an employee, nor to picketing by the use of force, intimidation, violence or threats thereof to prevent or attempt to prevent any employee from continuing in the employ of his employer.

[fol. 631] 2. The court did not err in overruling the special demurrers for reasons set out in the opinion.

3. (a). As to the general grounds of the motion for new trial, the evidence amply supported the allegations that the picketing was not peaceful and was for an unlawful purpose.

(b). The evidence was sufficient to authorize the jury to find that an unlawful conspiracy to injure and damage plaintiff's property was formed by the defendants, Law, Jaudon, and other members of the Savannah Chapter of the N.A.A.C.P. acting as agents of the N.A.A.C.P. New York corporation and within the scope of their agency and that the conspiracy was carried out resulting in injury and damage to the plaintiff's property.

(c). There is no evidence to support the finding that the defendant, the Georgia State Conference of Branches of the N.A.A.C.P., participated in the conspiracy to picket and injure plaintiff's property or was in any way responsible for any damage done.

4. (a). The evidence amply supports the jury's award of compensatory damages in the amount of $35,793.05.
[fol. 632] (b). The evidence of wilful, deliberate, wrongful and unlawful picketing of plaintiff's business causing great injury and damage to his property, was sufficient to authorize the jury to award punitive damages, *Code* § 105-2002; and this court cannot say that the amount awarded was excessive, as punitive damages are fixed by the enlightened conscience of an impartial jury, and, the jury's verdict will not be disturbed by this court as the amount awarded would not justify an inference of "gross mistake or undue bias." *Code*, § 105-2015.

5. For reasons set out in Division 5. the court did not err in overruling the twenty-five special grounds of the Motion for New Trial.

ARGUED JANUARY 12, 1965—DECIDED APRIL 20, 1965—
REHEARING DENIED MAY 7, 1965.

Injunction, etc. Chatham Superior Court. Before Judge McWhorter.

[fol. 633] The plaintiff, Haldred Overstreet, brought his petition, as amended, in the Superior Court of Chatham County against the National Association for the Advancement of Colored People, hereafter designated N.A.A.C.P., a New York corporation doing business in Georgia, the Georgia State Conference of Branches of the N.A.A.C.P., an affiliate of the New York corporation of the N.A.A.C.P., the Savannah Branch of the N.A.A.C.P., an affiliate of the New York corporation of the N.A.A.C.P.; W. W. Law, individually and as President of the Georgia and Savannah affiliate of the N.A.A.C.P. corporation of New York, and

F. D. Jaudon, vice-president of the Savannah and Georgia affiliates of the New York corporation of the N.A.A.C.P., and as representatives of the classes composing all members of the N.A.A.C.P., alleging a conspiracy among said defendants and all those represented by them to destroy plaintiff's business, the operation of a retail grocery store in Savannah, by picketing the store premises and inducing others to refrain from patronizing the establishment. The petition prayed for a temporary and permanent injunction and for compensatory and punitive damages. The defendants filed general and special demurrers to the petition as amended, and a motion to dismiss, which, with the ex- [fol. 634] ception of two special demurrers, were overruled. At the close of plaintiff's evidence, motions for nonsuit were made as to the defendants, the N.A.A.C.P., incorporated, the Georgia State Conference of Branches of the N.A.A.C.P., and the Savannah Branch of the N.A.A.C.P., which motions were denied. The jury awarded the plaintiff compensatory damages in the amount of $35,793.05 and punitive damages of $50,000, a total of $85,793.05 and found for a permanent injunction. The exceptions are to the judgment of the trial court overruling the special and general demurrers and the motion to dismiss the petition, denying the motions for nonsuit, and the overruling of the defendants' motions for new trial on the general and special grounds.

Maria L. Marcus, Ann G. Feldman, Robert L. Carter, E. H. Gadsden, B. Clarence Mayfield, Donald L. Hollowell, for plaintiffs in error.

Dickey, Futrell & Barker, Robert E. Barker, Grady Lee Dickey, contra.

[fol. 635] Mobley, Justice. 1. (a) All the defendants were represented by the same attorneys and the defensive pleadings were in material respects the same. The rulings made here apply to each and all, as did the judgments of the trial court.

In brief, the petition as amended alleged that plaintiff owned and operated a retail grocery store at a named location in Savannah and had for 16 years, and had created good will and good faith in the course of his business with the public; that on May 30, 1962, he had in his employ a 14 year old Negro boy, who, one of his clerks advised him, had stolen some grocery items; that he admonished the boy and discharged him, and within about two hours, the boy and a police officer returned to the store and the boy accused him of beating him; that the boy's aunt on the same day swore out a warrant against him for assault and battery, and he charged the boy with stealing. That on the next night, May 31, 1962, at a named church of which F. D. Jaudon was pastor, there was a mass meeting of the N.A.A.C.P. and the Savannah Branch of the N.A.A.C.P. called pursuant to circulars distributed to members at the direction of Law to protest the alleged "beating of a four-[fol. 636] teen (14) year old negro boy by the owner of the Tropical Fruit Market." Present were the defendants Law and Jaudon, the defendant, Law, appearing and acting as agent of the N.A.A.C.P., as its agent, employee and servant, within the scope of his agency, employment, and service, and in the furtherance of the business of the corporation and in a like capacity with the Savannah Branch and the Georgia State Conference of Branches of the N.A.A.C.P. At the meeting, the defendants unlawfully, wilfully, knowingly, and with malice and the intention of putting plaintiff out of business, organized what they termed a "Selective Buying" campaign to begin the next day at plaintiff's place of business; that pursuant to said plan defendants caused pickets to be placed adjacent to his place, who stopped customers and prospective customers on their way to his place of business, told them of the beating of the boy and urged them not to trade with plaintiff; that the picketing consisted of mass picketing in that numbers of pickets gathered around the premises of plaintiff, obstructing and interfering with the use of the public side-

walks and streets and entrance to plaintiff's business. That said mass picketing was a part of the conspiracy of defendants to intimidate customers from entering plaintiff's [fol. 637] store and to force, intimidate, and coerce him into going out of business. That the pickets are harassing and intimidating customers from going into plaintiff's store by creating an atmosphere of possible violence thereabout by having large numbers of pickets in and around plaintiff's premises, by stopping all customers and inciting and inflaming them against plaintiff and by telling them false and misleading statements as to plaintiff's conduct, all of which caused his customers to be fearful of trading with him; that defendants encouraged and induced the public to boycott plaintiff's business in order to accomplish their unlawful purpose of putting him out of business; that when the picketing began more than 2/3rds of his customers were negroes, and defendants knew this and they, the defendants, initiated and carried on the unlawful, wilful and malicious conspiracy with the intent and purpose to damage him in the pursuit of his lawful business; that defendant Law was the leader of the pickets, was instrumental in placing them, directed their method of operation and participated as a picket, all of which acts were performed as agent of the N.A.A.C.P., the Savannah Branch and the Georgia State Conference of Branches and within the scope of his agency; that all of the acts constituted a general [fol. 638] malicious scheme and conspiracy to force plaintiff out of business and to hinder him in engaging in a lawful business. It was also alleged that the pickets threatened physical harm to plaintiff's employees in an attempt to force them to quit his employ in violation of *Code Ann.* §54-801 (Ga. L. 1947, p. 620). It is alleged that as a result of said conspiracy he suffered described pecuniary loss of money in the operation of his business, that the good will which he enjoyed had been destroyed, damaging him in the amount of $40,000. He also asked $50,000 punitive damages.

The petition alleges an unlawful conspiracy of the defendants to destroy the lawful business of the plaintiff, which

resulted in loss of business and damages to his property. "Every agreement between two or more persons to accomplish a criminal or unlawful object, or a lawful object by criminal or unlawful means, is an unlawful conspiracy, and any person whose rights are injured by acts done in furtherance of such conspiracy has his action at law for redress in damages." *Brown & Allen* v. *Jacobs Pharmacy Co.*, 115 Ga. 429, 441 (41 SE 553, 57 LRA 547, 90 ASR 126); *Cook* v. *Robinson*, 216 Ga. 328 (1, 2) (116 SE2d [fol. 639] 742). "Malicious injury to the business of another will give a right of action to the injured party." *Southern R. Co.* v. *Chambers*, 126 Ga. 404 (1) (55 SE 37, 7 LRA (NS) 926); Original Ballet Russe, Ltd. v. Ballet Theater, Inc., 133 F2d 187; Shell Oil Co. Inc. v. State Tire & Oil Co., 126 F2d 971; Boston Casualty Co. v. Bath Iron Works Corp., 136 F2d 31. See also *DeFoor* v. *Stephens*, 133 Ga. 617 (1) (66 SE 786). "Where one maliciously and wrongfully, and with the intent to injure another person's business prevents others from dealing with him and his business is thereby injured, the person thus injured has a cause of action against the person thus causing the injury, for the loss and damage sustained." *American Oil Co.* v. *Towler*, 56 Ga. App. 866 (194 SE 223), citing *Brown & Allen* v. *Jacobs Pharmacy Co.*, supra.

In 9 ALR2d 228 in an exhaustive annotation dealing with "Liability of one who induces or causes third person not to enter into or continue a business relation with another," it is said at p. 232 " . . . it would seem that the principle is generally recognized that a person's business is property in the pursuit of which he is entitled to protection from tortious interferences by a third person who, in interfering therewith, is not acting in the exercise of some right, such [fol. 640] as the right to compete for business" citing cases from many States, the United States Supreme Court, and this court.

"Every individual has a natural right to pursue a lawful occupation and to conduct his business according to his own

plans and policies, where he does not offend the law or unlawfully infringe upon the rights of others." *Jones* v. *Van Winkle Gin &c. Works,* 131 Ga. 336, 337 (62 SE 236, 17 LRA (NS) 848, 127 ASR 235). The plaintiff's business was a lawful business, was being operated in a lawful manner, and was property in which he had the right to protection in the use and enjoyment thereof. He had not in the operation of that business infringed upon the rights of the defendants. If he, as defendants contend, committed an assault and battery upon an employee, that is a criminal act, the punishment for which rests with the courts and not with individuals. Otherwise, we have anarchy. The alleged conspiracy to destroy his property by means of mass picketing of his store, intimidation and harassing of customers and employees simply because they may have thought he had mistreated a negro employee was unlawful, *Jones* v. *Van Winkle Gin &c. Works,* supra, (1); *Pedigo* v. [fol. 641] *Celanese Corp.,* 205 Ga. 392, 397 (54 SE2d 252), and constituted a tort against plaintiff by the conspirators for which they would be liable in damages, upon proper proof of the allegations.

Where, as here, a cause of action for damages for tort against the defendants is set out, the allegations showing a conspiracy make any actionable deed by one of the conspirators chargeable to all. *Cook* v. *Robinson,* 216 Ga. 328 (4), supra, and cases cited therein. The liability is joint and several. *Smith* v. *Manning,* 155 Ga. 209 (2) (116 SE 813). A corporation may be a party to a conspiracy and may be held civilly liable for resulting damages to the same extent as a natural person. 16 Am. Jur. 2d 151, § 47. The allegations that the N.A.A.C.P. corporation acting through its agents, conspired with others to damage and destroy plaintiff's business and performed described acts and did damage his property, stated a cause of action against the corporation as well as the individuals and the organizations which they represented and for which they acted. The trial court properly overruled the general demurrer to the petition, as amended, as to all the defendants.

[fol. 642] (b) The motion to dismiss the petition on the ground that it failed to state a cause of action for the reason that the defendants have the right, protected by the Constitution of The United States, to engage in peaceful picketing and other forms of peaceful activity designed to persuade the public not to patronize a commercial establishment that practices racial discrimination, and that in engaging in these activities the defendants were exercising a right of freedom of speech and assembly guaranteed by the due process clause of the 14th Amendment to the United States Constitution, and the Constitution of Georgia is without merit.

First, there is no allegation that the plaintiff practiced racial discrimination, nor any facts alleged from which such conclusion could be drawn. On the other hand, the petition alleges that more than 2/3rds of plaintiff's customers were negroes. The sole reason alleged for the picketing was the alleged assault and battery upon the 14 year old negro boy who worked for the plaintiff. It is not alleged that plaintiff was charged with beating the boy because he was a negro. "The right to exercise freedom of speech by means of peaceful picketing carries with it [fol. 643] no right to use force, violence, intimidation, harassment or the like. *Robinson* v. *Bryant,* 181 Ga. 722 (184 SE 298); *Local Union No. 3871, United Steel Workers of America* v. *Fortner,* 202 Ga. 206 (5) (42 SE2d 734); *Burgess* v. *Georgia Fla. &c. Ala. R. Co.,* 148 Ga. 417 (96 SE 865); American Steel Foundries v. Tri-City Central Trades Council, 257 U.S. 184, 206," *Pedigo* v. *Celanese Corp.,* 205 Ga. 392, 397, supra. The petition alleges the use of force, violence, intimidation, harassment and other like activities. Applicable here is the following from *Ellis* v. *Parks,* 212 Ga. 540, 542 (93 SE2d 708): "The judicial theory that peaceful picketing is a form of free speech, as announced in Carlson v. California, 310 U.S. 106 (60 Sup. Ct. 746, 84 L. Ed. 1104), which is protected by the Constitutions, both Federal and State (*Code Ann.* §§ 1-801, 2-115), can not be

stretched to shield malevolent picketing for the purpose of injuring the employer and aiding an unlawful strike. Both the Supreme Court of Georgia and the Supreme Court of the United States have held that a person can not employ lawful acts for spite and solely for the purpose of injuring another, and that such malicious purpose renders the acts unlawful. *Hornsby* v. *Smith,* 191 Ga. 491 (13 SE2d 20, 133 [fol. 644] ALR 684); American Bank &c. Co. v. Federal Reserve Bank, 256 U.S. 350 (41 Sup. Ct. 499, 65 L. ed. 983, 25 ALR 971)." See also *Fleming* v. *H. W. Ivey Const. Co., Inc.,* 215 Ga. 460, 462 (2) (111 SE2d 97); *Curry* v. *Construction & General Laborers Union Local No. 438,* 217 Ga. 512 (123 SE2d 653). Where, as alleged here, the sole purpose of the picketing of plaintiff's place of business was to injure and damage his business, as punishment of him for the alleged beating of a negro boy who worked for him, the picketing is unlawful and not protected under the free speech provisions of the Federal and State Constitutions.

The picketing alleged here was unlawful for the further reason that it was in violation of *Code Ann.* §§ 54-801, 54-805 (Ga. L. 1947, pp. 620, 621) which provide: "It shall be unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence, or threats thereof, to prevent or attempt to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer, or from entering or leaving any place of employment of such employer." (§54-801). "It shall be [fol. 645] unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence, or threats thereof, to prevent or attempt to prevent any employer from lawfully engaging or continuing to engage in any proper and lawful business activity, or from the proper, lawful or peaceable use or enjoyment of his property used or useful in the conduct of such business, or from acquiring materials or supplies for the purposes of such business, or from disposing of the

goods, wares or products of such business, or to prevent or attempt to prevent any carrier or other person from supplying or delivering materials or supplies to any such employer, or from receiving or accepting delivery on the premises of such business of the goods, wares or products of such business." (§54-805). "It is a penal offense in this State to attempt by threats, violence, intimidation, or other unlawful means to prevent any person from engaging in any lawful employment . . ." *Robinson* v. *Bryant,* 181 Ga. 722, 728, supra. See *Code* § 66-9906 (Ga. L. 1887, p. 107); *Woodard* v. *Collier,* 210 Ga. 239 (78 SE2d 526); *Powers* v. *Courson,* 213 Ga. 20 (96 SE2d 577). The trial court committed no error in overruling the motion to dismiss the petition.

[fol. 646] 2. The trial court did not err in overruling the special demurrers numbers 3, 4, and 5. Special demurrers 1 and 2 were sustained by the trial court. Special demurrer 3 complains that the petition does not allege facts showing that any of the defendants committed alleged unlawful acts of harassing and intimidating customers of plaintiff by creating an atmosphere of violence around his place of business. The petition alleges a conspiracy among the defendants and others, and that the defendant Law acting for the N.A.A.C.P., organized, directed and actually participated in the picketing, and that the pickets did harass and intimidate plaintiff's customers. The act of any conspirator would be the act of all engaged in the conspiracy, thus the allegation is sufficient. Special demurrer 4 complaining that the time and place the alleged acts of the pickets in threatening physical harm to plaintiff's employees occurred is not alleged is without merit, as the petition sets out the place, plaintiff's store, and the time—the period from May 31, 1962, when the picketing began to June 22, when it was stopped by injunction. Special demurrer 5 was met by amendment alleging facts called for by the demurrer.

[fol. 647] 3. Motion for new trial.

(a) General grounds. The evidence was amply sufficient to establish the allegations of the petition that the defendants Law and Jaudon and other members of the N.A.A.C.P. formed a conspiracy among themselves to injure and damage plaintiff's business and to seek to put him out of business by picketing his place of business as punishment of him for (as they claim) beating a 14 year old negro boy who worked for him. Law testified that he selected the pickets, placed them at designated points around plaintiff's store, and maintained them there until enjoined by the court and that he himself served on the picket line from time to time. Large numbers of people joined in the picketing, at times blocking the sidewalks and making it necessary for plaintiff's employees and customers to walk in the street and blocking their entrance or making it difficult to enter. There was also evidence of mass picketing of the plaintiff's place of business effected by surrounding the premises and sidewalks adjacent thereto with large numbers of people, so as to prevent persons from entering his store, by creating an atmosphere of violence around the premises by inciting, inflaming, and prejudicing cus-
[fol. 648] tomers all of which caused customers to be fearful of doing business with him. The plaintiff and his wife and employees were threatened with violence, called vile and vulgar names. Bricks and rocks were thrown through the windows and onto the roof. A pistol was shot from the vicinity of the picket line, the bullet passing over the head of a customer who lived directly back of the store. The employees were threatened with physical harm if they continued to work for plaintiff.

Counsel for defendant contend that the evidence did not show that the pickets placed by the N.A.A.C.P. committed the various acts outlined above. However, the evidence is undisputed that all was peace and quiet around plaintiff's place of business until the picketing began and it returned only after the defendants were enjoined from further

picketing of the place. The evidence was sufficient for the jury to conclude that as a result of the mass meeting of the N.A.A.C.P. the picketing began, that the picketing was led by pickets placed on the picket line by Law, that they were joined by large numbers of sympathizers or other members of the conspiracy, and that the presence of the pickets brought about mass picketing, threats, violence, the use of [fol. 649] vile, vulgar and indecent language toward plaintiff, his wife, employees and customers. The picketing was not peaceful, thus unlawful; and it was for an unlawful purpose—punishment of plaintiff for the alleged commission of a criminal offense, assault and battery.

[fol. 650] (b) In determining whether there was sufficient evidence to establish a cause of action as against the defendants, the Savannah Chapter of the N.A.A.C.P., the N.A.A.C.P. corporation of New York, and the Georgia Conference of Branches of the N.A.A.C.P., it must be determined whether there is evidence that the defendants Law or Jaudon were acting as agents of said defendants. The evidence shows that the defendant Law was president of both the Savannah Branch and of the Georgia State Conference of Branches of the N.A.A.C.P., a New York corporation. Acting in that capacity he, by means of the circulars, called a mass meeting of the N.A.A.C.P. and of the Savannah Chapter of the N.A.A.C.P., in which meeting he and Jaudon participated and led the group in reaching the conclusion that the N.A.A.C.P. would picket the plaintiff's place of business with the view of injuring and damaging his business by inducing customers and prospective customers to refrain from trading with him; and, pursuant thereto, Law selected pickets, placed them at various places around plaintiff's place of business, picketed himself, and generally directed the picketing. "The function of the N.A.A.C.P.," according to Law, "is to give aid and assist-[fol. 651] ance to people in the minority group, meaning the negro group in seeking their rights and protection under the Constitution." In furtherance of that plan the

N.A.A.C.P. corporation of New York acts and operates in Georgia through the Savannah Chapter and other chapters, which compose the defendant, Georgia State Conference of Branches of the N.A.A.C.P. The petition was served upon the N.A.A.C.P. corporation, the Savannah Branch, and the Georgia State Conference of Branches of the N.A.A.C.P. by serving Law, as their agent. No plea to the jurisdiction or traverse of service was filed by any defendant, but each submitted to the jurisdiction of the court by filing answers, not made subject to their general demurrer, which alleged that the plaintiff did not state a cause of action against the defendant.

The Savannah Branch used the corporate name, N.A.A.C.P., and held itself out as representing the national corporation. The national corporation gave orders and counsel to its local representatives at annual conventions; the locals were affiliated with the national organization, and under its corporate charter, were units thereof; one paying dues to the local N.A.A.C.P. also became a member of the [fol. 652] national N.A.A.C.P.; members of the local were members of the national N.A.A.C.P. and a portion of the dues went to the N.A.A.C.P. corporation. These facts evidence that the locals are within the framework of the national organization and are used in furtherance of the latter's business and interest. "The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf." *Code* § 4-101. A contract or an express agency agreement is not necessary to establish the relation. *Hubert* v. *Harpe,* 181 Ga. 168, 169 (182 SE 167). "The fact of agency may be established by proof of circumstances, apparent relations, and the conduct of the parties . . ." *Cable Co.* v. *Walker,* 127 Ga. 65 (1) (56 SE 108), and "A claim of agency may be established by circumstantial evidence . . ." *Universalist Convention* v. *Guest,* 179 Ga. 168 (2) (175 SE 466) and cases cited.

The national corporation never at any time disavowed the agency of Law, Jaudon, or the Savannah Chapter in acting for it in this matter. It was notified of the action by Law. It came into court and defended the case on its merits, contending that a cause of action was not alleged [fol. 653] or proven against them.

If Law originally acted without authority and assumed to act for them without authority, they had the option to repudiate or ratify the act, but they were required to do one or the other. And where, as here, they never repudiated the act, they are deemed to have affirmed it. See Mechem, Outlines of Agency (3d Ed), p. 94, § 152; *Southern Motors of Savannah* v. *Krieger,* 86 Ga. App. 574 (71 SE2d 884); *Haney School Furn. Co.* v. *Hightower Bapt. Inst.,* 113 Ga. 289 (2) (38 SE 761); *Glisson* v. *Burkhalter,* 31 Ga. App. 365 (4) (120 SE 664).

We are of the opinion that the record supports the conclusion that Law acted as agent of the defendant's Savannah Chapter, and of the N.A.A.C.P. New York corporation, and within the scope of his authority in calling the mass meeting, holding the meeting, in concluding to picket plaintiff's store and in picketing it, causing injury and damage thereto.

[fol. 654] (c) We do not believe that the evidence is sufficient to render the defendant Georgia State Conference of Branches of the N.A.A.C.P. responsible for the acts of Law, Jaudon and other members of the Savannah Branch of the N.A.A.C.P. in picketing and damaging plaintiff's business. There is no evidence that that organization had anything to do with this matter. While Law was president of that defendant, there is no evidence that he purported to act for it in calling a mass meeting to deal with plaintiff or in carrying out the plan agreed upon to picket plaintiff's business, nor that any other member purported to be acting as agent or in behalf of that defendant. So far as the record shows, no branches of the Georgia State Conference of Branches of the N.A.A.C.P. other than the Savannah

Branch, participated in the conspiracy or authorized anyone to act for them, or ratified any acts of Law or anyone else who may have purported to act for them.

Thus we conclude that as to the Georgia State Conference of Branches of the N.A.A.C.P. the verdict was without evidence to support it, and that the court erred in not granting the motion for new trial as to this defendant. As to the defendants, Law, Jaudon, the Savannah Chapter of [fol. 655] the N.A.A.C.P. and the N.A.A.C.P. corporation, the general grounds of the motion for new trial are without merit.

4. Compensatory and punitive damages.

(a) The jury awarded the plaintiff compensatory damages of $35,793.05 and punitive damages of $50,000.

Plaintiff alleged and the evidence supported the allegations that his net income from his business for the twelve months preceding the picketing was $3,018.26 and he suffered a loss of $952.19 during the twelve months following the beginning of the picketing, or a net loss of $3,970.45, which was the result of defendants' picketing his place of business; that the loss would have been much greater but for his action in terminating the services of seven of his eight employees and his wife and himself increasing their work at the store from three or four hours per day to twelve to fourteen hours. Plaintiff testified that he planned to continue in business for ten to twelve years, and his age and condition would support the conclusion that he could do so. It is uniformly recognized that good will is a species of property and constitutes a valuable asset of the [fol. 656] business of which it is a part. 24 Am. Jur. 804, § 4. "Good will is an attribute of a business . . ." 24 Am. Jur. 807, § 10. "Good will is the favor which the management of a business wins from the public, and the probability that old customers will continue their patronage and resort to the old place." *Armstrong* v. *Atlantic Ice & Coal Corp.*, 141 Ga. 464, 466 (81 SE 212). The evidence shows

conclusively that the plaintiff's business enjoyed the good will of the negro community prior to the picketing by defendants, as two of every three of his customers were negroes, and that the picketing of his store by defendants destroyed the good will of the negroes, as they stopped trading with him. To wrongfully injure and damage the good will of plaintiff's business gives a cause of action in tort for the resulting damage. In determining the value of the good will and the amount of damage thereto, the actual loss of earnings, as the proximate result of the tort, may be considered in determining the amount of damages to the good will of plaintiff's business. Thus, the evidence as to loss of earnings present and future and other evidence of damage to the good will of plaintiff's business caused by the illegal picketing thereof would support a finding [fol. 657] that he suffered more than $40,000 in actual damages. The verdict of $35,793.05 as compensatory damages suffered by plaintiff was authorized by the evidence and was not excessive.

(b) This division has been re-written to include discussion of the complaints thereto made in the motion for rehearing. Punitive damages in the amount of $50,000 were awarded plaintiff by the jury. *Code* § 105-2002 provides: "In every tort there may be aggravating circumstances, either in the act or the intention, and in that event the jury may give additional damages, either to deter the wrongdoer from repeating the trespass or as compensation for the wounded feelings of the plaintiff." This court in the recent case of *Cook* v. *Robinson,* 216 Ga. 328, 332 (10), supra, held that allegations of the petition that the defendants damaged petitioner in a named amount by their wilful, deliberate, wrongful and unlawful deeds, acts, etc., committed pursuant to a conspiracy among them to unlawfully ruin and destroy plaintiff's business, stated a cause of action for punitive damages, citing *Code* § 105-2002 and *Walker* v. *Grand International Brotherhood &c. Engineers,* 186 Ga. 811 (199 SE 146). The allegations of plaintiff's

[fol. 658] petition were substantially the same and stated a cause of action for punitive damages, and the evidence was sufficient to support same as shown by a review of the evidence on the general grounds in Division 3 (a).

Plaintiffs in error complain for the first time in their motion for rehearing of the court's charge on punitive damages. While the amended motion for new trial contains twenty-five special grounds, it did not contain one complaining of the charge on punitive damages. Thus the question was not submitted to the trial court, was not passed upon by that court, is not excepted to in this court, and thus under the law of this State cannot be considered by this court. Under the Constitution of this State, Art. VI Sec. II, Par. IV, *Code* § 2-3704, this is a court alone for the trial and correction of errors of law from the superior courts and other named courts, and "The Supreme Court . . . shall not decide any question unless it is made by a specific assignment of error in the bill of exceptions . . ." *Code* § 6-1607 (Ga. L. 1892, p. 113); *Brown Transport Corp.* v. *Truck Drivers & Helpers Local Union No. 728,* 218 Ga. 581, 584 (129 SE2d 767) and cases cited. [fol. 659] Punitive damages are recoverable in this case under *Code* § 105-2002 either "to deter the wrongdoer from repeating the trespass, or as compensation for the wounded feelings of the plaintiff." The evidence would support the vedict on either theory. The plaintiff could not recover for both, nor does the record indicate that the jury awarded punitive damages on both.

It is a question for the jury when punitive damages shall be allowed as well as the amount of such damages. *Batson* v. *Higginbothem,* 7 Ga. App. 835, 839 (2) (68 SE 455); *Kolodkin* v. *Griffin,* 87 Ga. App. 725, 731 (5) (75 SE2d 197).

The measure of damages where punitive damages are recoverable is to be fixed by the enlightened conscience of an impartial jury. *Selman* v. *Barnett,* 4 Ga. App. 375 (2) (61 SE 501); *Head* v. *John Deere Plow Co.,* 71 Ga. App. 276, 279 (4) (30 SE2d 662).

"The question of damages being one for the jury, the court should not interfere, unless the damages are either so small or so excessive as to justify the inference of gross mistake or undue bias." *Code* § 105-2015. See also *Lang* v. *Hopkins,* 10 Ga. 37 (3); *Adkins* v. *Williams,* 23 Ga. 222 (2); *Thorpe* v. *Wray,* 68 Ga. 359 (3a); *Realty Bond & Mort. Co.* v. [fol. 660] *Harley,* 19 Ga. App. 186 (2) (91 SE 254); *Fields* v. *Jackson,* 102 Ga. App. 117 (1) (115 SE2d 877). This court cannot say that the amount awarded as punitive damages is excessive.

[fol. 661] 5. Special grounds for new trial. Special ground 1. While it was not relevant in this case whether the defendant Law, as President of the Savannah Chapter and the Georgia State Branches of the N.A.A.C.P., had picketed on other occasions without first talking to and trying to negotiate their differences with the party to be picketed, his answer that that was generally their method and the reason it was not followed here was that the neighborhood was already incensed and the action they endorsed was already in progress, rendered the admission of the evidence harmless.

Special ground 2. The court did not err in permitting the witness to testify over objection that she was pregnant when she was threatened by someone in the picket line, as the evidence showed that the picket line was established by the defendant Law, acting for the N.A.A.C.P. The fact that she was seven months pregnant and was threatened in that condition goes to the gravity of the picketing and would be material on the question of its unlawfulness.

[fol. 662] Special ground 3. It was not error to admit, over the objection that none of the defendants were present, testimony of the witness as to threats and other remarks the negroes standing on the corner and across the street made to her when she traded at the store, as Law admitted that he assisted in placing the pickets on the picket line, and the evidence shows that several of the remarks were made by the pickets and others assisting them in picketing.

Special ground 4. The admisison of the testimony objected to in special ground 4 was not error for any reason assigned.

Special grounds 5, 6, 7, and 8 objecting to testimony as to threats, acts of violence, cursing, use of vulgar language, and a pistol shot by those picketing the plaintiff's place of business, are without merit. As pointed out by the trial judge in overruling these grounds, it clearly appears from the evidence that the presence of the pickets incited acts of violence around the place and that if the presence of the pickets and what they told people brought about the situation of tenseness and lawlessness about plaintiff's place of business, the pickets and those responsible for [fol. 663] them would be liable, if the picketing was not justified or amounted to mass picketing. This evidence was admissible on the question of liability of defendants for the damage done to plaintiff's business and responsibility of the defendants therefor.

Special grounds 10, 11, 12, 17, 18, 19, 20, and 21. The rulings heretofore made on direct exceptions to the denial of nonsuits and on the general grounds dispose of adversely to the plaintiff in error special grounds 10 and 11, complaining of the trial court's refusal to grant a nonsuit, special ground 12 of failing to direct a verdict, and special grounds 17, 18, 19, 20, and 21 which complain that the verdict is contrary to law because it deprives defendants of their right to freedom of speech and of their property without due process of law in violation of the United States Constitution.

Special grounds 22, 23, and 24 complaining respectively of the charges "Before the plaintiff can recover, you must be satisfied that the preponderance of the credible evidence in this case showed that the defendants conspired to unlawfully injury (sic) plaintiff in his business and by illegal acts [fol. 664] did in fact injured (sic) him;" "Now I charge you that one has a right to do business, and that right is a prop-

erty right, and if that right is interfered with he can recover damages"; and, "But whatever your verdict is, it should be signed and dated by your foreman," are so obviously without merit they are overruled without discussion. Plaintiff in error did not argue them.

Special ground 14. It was not error to charge "as the court sees it, you can't get agency and conspiracy separated in this case," as the question was whether there was a conspiracy to violate plaintiff's rights by the N.A.A.C.P. defendants acting by and through their agents Law, Jaudon, and other members of the N.A.A.C.P.

Special ground 15. It was not error to charge the jury that "you can consider the effect of the picket. Did the pickets incite—were the fact that the pickets were there incite activity upon people who were not at all connected with the organization; and if that was incited by the pickets, by their mere presence, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted." The court continued, "But if that was [fol. 665] an entirely independent efficient cause that had nothing to do with the pickets, if you find that was true, of course the pickets nor the organizations who placed them there could be responsible. So you have to determine. Proximate cause is always a question of fact for the jury." The court's charge taken as a whole made it clear that if the picketing incited others, who were not pickets, to do acts against the plaintiff's business that the picketers would be a contributing proximate cause of what resulted, but if these were entirely independent efficient causes that had nothing to do with the pickets, the pickets would not be responsible therefor.

In responses to the motion for rehearing, we wish to point out that a conspiracy to wrongfully, unlawfully, and maliciously injure and damage plaintiff's business and to put him out of business is charged against the defendants; that such conspiracy was formed at a mass meeting of the

N.A.A.C.P. called by the defendants Law and Jaudon, and that pursuant thereto picketing began the next day and continued until stopped by the court; and that there was violence, threats against plaintiff and his employees, bricks [fol. 666] and rocks thrown into and on top of the store, blocking of the sidewalks and entrance to his store, mass picketing, harassment and intimidation of customers and employees, coming from the mass of negroes picketing the place, some of whom were admittedly those representing the defendants and placed there by Law. "The law recognizes the intrinsic difficulty of proving a conspiracy . . . The conspiracy may sometimes be inferred from the nature of the acts done, the relation of the parties, the interest of the alleged conspirators, and other circumstances." *Woodruff* v. *Hughes,* 2 Ga. App. 361 (58 SE 551); *Horton* v. *Johnson,* 192 Ga. 338, 346 (15 SE2d 605). "A conspiracy or common intent may be shown to have existed between the parties by proof of acts and conduct, *Davis* v. *State,* 114 Ga. 104 (39 SE 906); *Odum* v. *State,* 183 Ga. 854 (190 SE 25); and it may be shown by circumstantial or direct evidence. *McElroy* v. *State,* 125 Ga. 240 (2) (54 SE 125)." *Huckaby* v. *Griffin Hosiery Mills,* 205 Ga. 88, 91 (52 SE2d 585). Applying those principles here, the evidence would authorize the jury to find that such violent and unlawful picketing was the proximate result of the conspiracy without specific proof that one or more of the pickets placed there by Law were the ones who threw the rock, or per- [fol. 667] formed other specific acts of violence, intimidation, etc.

The principles enumerated in Wright v. State of Georgia, 373 U.S. 284 (83 SE 1240, 10 LE2d 349); Terminiello v. Chicago, 337 U.S. 1 (69 SC 894, 93 LE 1131), rehearing den. 337 U.S. 934; Near v. Minnesota, 283 U.S. 697 (51 SC 625, 75 LE 1357); Cantwell v. Connecticut, 310 U.S. 296 (60 SC 900, 84 LE 1213), cases relied upon by defendants in their motion for rehearing on this ground are distinguishable on their facts. The principle is explicitly stated and applied in Wright v. Georgia, supra, where the Supreme

Court of the United States reversed this court, holding that the convictions of negro children playing in a park in Savannah, formerly used exclusively by whites, cannot be sustained on the ground that their presence there "was likely to cause a breach of the peace by others, since the possibility of disorder by others cannot justify exclusion of a person from a place where he had a constitutional right to be." There was disorder, violence, intimidation, etc., here—not the mere possibility of such; and furthermore, the pickets had no lawful or constitutional right to form a conspiracy to violate plaintiff's right to operate his business, where he was not infringing any of their rights, or to force him out of business as punishment for committing a mis- [fol. 668] demeanor upon one of his employees or prevent or attempt to prevent his employees from continuing in his employ by intimidation, force or violence, etc.

This case does not involve a controversy between the races. The relations of this white storekeeper and the negroes of this community were obviously friendly and cordial, for his business depended upon their friendship and good will. He had both, as evidenced by the fact that more than two-thirds of his customers were negroes. He had built this good will over a number of years which must have required his good will toward them. The single incident, whether caused by plaintiff firing the boy or whipping him—whichever is true—and the evidence as to what occurred is inconclusive, would not justify the conclusion that the boy's race had anything to do with it. There is no evidence that what happened occurred because he was a negro. It might as well have happened to a white boy. This is obviously not a case of peaceful picketing to protest racial discrimination.

Special ground 16. complains that the charge set out above in the ruling on special ground 15 that if the picketing [fol. 669] by the N.A.A.C.P. incited others to join in and commit acts against plaintiff's business, that the act of the pickets would be the proximate cause of the injury

deprived the Savannah Branch of the N.A.A.C.P. of freedom of association in violation of the 1st and 14th Amendments of the United States Constitution. The ground does not show that it violates defendant's rights of freedom of association, as contended.

Judgment reversed as to the defendant Georgia State Conference of Branches of the N.A.A.C,P. Judgment affirmed as to all other defendants. All the Justices concur.

[fol. 670]
22814

IN THE SUPREME COURT OF GEORGIA

JUDGMENT—April 20, 1965

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

National Advancement for the Advancement of Colored People et al. v. Haldred Overstreet.

This case came before this court upon a writ of error from the Superior Court of Chatham County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed for the reasons stated in the opinion as to the defendant, the Georgia State Conference of Branches of the N.A.A.C.P. Judgment affirmed as to all other defendants. All the Justices concur.

Bill of costs, $15.00.

[fol. 671]

IN THE SUPREME COURT OF GEORGIA

[Title omitted]

EXCERPTS FROM MOTION FOR REHEARING

Come now, the plaintiffs-in-error in the above-captioned case, and within the time provided by law, file this their motion for rehearing and for grounds state:

* * * * * * *

[fol. 672] 4.

Plaintiffs-in-error further respectfully submit that this Court misapplied the decisions which it recites in support of its holding that the individual defendants and the Savannah Branch, NAACP, were the agents of the corporate-defendant. Submitting that the cases cited properly recite the law, it is contended that use of such cases must be supported by the evidence.

The facts show that the corporate-defendant was not even aware of the Savannah Branch's meeting or the picketing by anyone. Nor were they aware of the disorders which allegedly took place in the area around the premises. Law, in his uncontraverted testimony testified that the corporate-defendant only became aware of the situation when the court order temporarily restraining the picketing was served on it, a month after the Savannah Branch meeting had been held (R. 182-183). He further testified that the only time in which the corporate-defendant would otherwise have been advised of the Branch activities would have been in the Branch's annual report (R. 182). It suffices to say that under the evidence there are no 'orders' given by the corporate-defendant to the Savannah Branch as stated in the opinion. Nothing in the organizational or legal structure of the corporate-defendant and Savannah Branch justifies an inference of knowledge. Clearly, without knowledge or legal responsibility for knowledge there can be no conspiracy participation. *Monand* v. *Universal Film Exchange*, 72 Fed. Supp. 469, aff'd 172 F. 2d 37, cert. den., 330 U.S. 907; rehearing den., 337 U.S. 934; rehearing den., 337 U.S. 961. Further, since there was no evidence that Law originally acted without authority and assumed to act for the corporate-defendant without au-

[fol. 673] thority, or that the corporate body had at any time given any authority to him or the Savannah Branch to act for them, there could be no requirement of repudiation or ratification by the corporate body as suggested by the opinion and the cases cited therein. Also, by way of anal-

ogy, it has been determined that before a local union can be considered an agent of the national union it must be shown that the national is in a position to control the activities of the local. *DiGiorgie Fruit Corp.* v. *NLRB,* 191 F. 2d 642 (1950), cert. den., 342 U.S. 869. Of course, there is no evidence in this case that the Savannah Branch or Law were under the control of the corporate-defendant.

5.

This Court has permitted the jury award of $50,000 punitive damages as against all but one of the defendants to stand in spite the fact that there was absolutely no evidence introduced to show the existence of malice or bad faith by any of the defendants. When these damages are viewed in light of the admission of prejudicial hearsay testimony concerning unlawful acts by persons unnamed and unidentified other than by race, and in light of the trial judge's ruling and charge which permitted the jury to find against *all* of the defendants without requiring any evidence of agency between the alleged perpetrators and defendants, the conclusion becomes inevitable that this Court, and the court below, has permitted judicial processes to be used in such manner as to effectively limit or to bring an end to NAACP local and national activities in this State. This subverts the judicial processes and clearly constitutes a deprivation of due process under the Fourteenth Amendment, and a denial of First Amendment rights to freedom of association, all under the United States Constitution and Article I, Section 1, paragraphs 3 and 24 of the Georgia Constitution, 1945.

[fol. 674] Wherefore, your petitioners, plaintiffs-in-error, pray that a rehearing be granted in this case and the decision of the Court reversed.

Donald L. Hollowell, 859½ Hunter St., N. W., Atlanta, Georgia 30314.

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[fol. 674a] Certificate of Service (omitted in printing).

[fol. 675]

IN THE SUPREME COURT OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—May 7, 1965

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

National Association for the Advancement of Colored People et al. v. Haldred Overstreet.

Upon consideration of the motion for a rehearing filed in this case it is ordered that it be hereby denied.

[fol. 676] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 677]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1965

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, SAVANNAH BRANCH, ET AL., Petitioners,

VS.

HALDRED OVERSTREET

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 30th, 1965.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 30th day of July, 1965.

[fol. 678]

Supreme Court of the United States

No. 505, October Term, 1965

National Association for the Advancement of Colored People, et al., Petitioners,

v.

Haldred Overstreet

Order Allowing Certiorari—December 6, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted limited to Question 2 presented by the petition which reads as follows:

"2. Has petitioner National Association for the Advancement of Colored People, a New York Corporation, been deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control?"

The case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,
Petitioners,

v.

HALDRED OVERSTREET.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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IN THE

Supreme Court of the United States

October Term, 1965

No.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,

Petitioners,

v.

HALDRED OVERSTREET.

BRIEF FOR PETITIONERS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered on April 20, 1965, and rewritten on May 7, 1965 at the time of denial of a rehearing, in the above-entitled cause.

Opinion Below

The opinion of the Supreme Court of Georgia affirming and modifying the judgment of the trial court is not reported and is printed as Appendix A, *infra* at page 1a. The order of the Georgia Supreme Court denying petitioners' motion for a rehearing is printed as Appendix B, *infra* at page 25a.

Jurisdiction

The judgment of the Supreme Court of Georgia affirming the trial court's judgment as against all original defendants except the Georgia State Conferenee of Branches was entered on April 20, 1965 (at page 1a, *infra*). A motion for rehearing was denied on May 7, 1965 (at page 25a *infra*). An extension of time until August 30, 1965 to file this petition was granted by Mr. Justice Black on July 30, 1965. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3), petitioners having asserted in the courts below rights, privileges and immunities conferred by the Constitution of the United States.

Questions Presented

1. Has the Supreme Court of Georgia violated petitioners' right to freedom of association under the First and Fourteenth Amendments by affirming that the "mere presence" of some of the petitioners in an area where misconduct allegedly occurred creates liability on petitioners' part, regardless of the propriety of petitioners' acts, and by affirming a judgment in the amount of $85,793.05 against petitioners when such judgment represents judicial reaction to the activities of a lawful group attempting to eliminate racial discrimination by making the public aware of its occurrence?

2. Has petitioner National Association for the Advancement of Colored People, a New York corporation, been deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control?

3. Have the rights of petitioners under the First and Fourteenth Amendments to the United States Constitution to express themselves through peaceful picketing been

abridged by the issuance of an injunction against such picketing by the state courts of Georgia because of alleged misconduct by certain unidentified persons not shown to have been connected with or under the control of petitioners?

4. Have the rights of petitioners under the First and Fourteenth Amendments to advise the public through peaceful picketing of a grievance they believed to be genuine been abridged by requiring the jury to adjudicate the legitimacy of such grievance as a prerequisite to finding the picketing to be entitled to constitutional protection?

Statement

A. Prior Proceedings

Petitioners are the National Association for the Advancement of Colored People (hereinafter called NAACP); Savannah Branch of the NAACP; and some members of the Savannah Branch individually. They were tried with the Georgia State Conference of NAACP Branches in November, 1963, in the Superior Court of Chatham County, in the State of Georgia, on a petition alleging conspiracy to destroy respondent's business by picketing his premises and inducing others to refrain from patronizing the establishment. The petition sought a temporary and permanent restraining order as well as compensatory and punitive damages. A temporary restraining order, entered on June 22, 1962, was made permanent by the jury after trial. The jury also awarded damages as against all of the original defendants in the amount of $85,793.05, consisting of $35,793.05 compensatory and $50,000.00 punitive damages. Thereafter, petitioners filed a motion for a new trial based upon general grounds and on April 17, 1964, additional time having previously been allowed by the trial court, twenty-four specific grounds were enumerated in an amendment to the original motion for a new trial. This motion was denied by the trial court on October 9, 1964. On

appeal to the Supreme Court of Georgia, the clerk of that court by letter dated February 11, 1965, requested respondent to furnish supplementary briefs on the liability of petitioner NAACP and Georgia State Conference of Branches and on the damage award. Thereafter, on April 20, 1965, that court affirmed the judgment as against individual petitioners Law and Jaudon and as against the Savannah Branch of the NAACP and the national office of the NAACP and reversed as to the Georgia State Conference of Branches. Petitioners' motion for a rehearing was denied by order dated May 7, 1965 and certain portions of the original opinion were rewritten but remained dated April 20, 1965. On July 30, 1965, Mr. Justice Black granted petitioners' motion for an extension of time to file a petition for writ of certiorari until August 30, 1965.

B. Evidence Presented

Petitioner Law is a resident of Savannah County, Georgia, and President of petitioner Savannah Branch of the NAACP and the Georgia State Conference of Branches, NAACP, both of which are unincorporated bodies, operating as independent units, under charters granted by petitioner NAACP, a New York Corporation (R. 152-54). Petitioner Reverend F. D. Jaudon is First Vice President of the Savannah Branch, NAACP (R. 185). Respondent is the owner and operator of a retail open-air market located in a Negro residential area in Savannah (R. 386, 266).

On May 30, 1962, Robert Lee Bolton, a Negro boy of fourteen and respondent's only Negro employee, reported to the principal of his school and to his mother that he had just been physically assaulted by respondent who had falsely accused him of stealing merchandise from the market and had hit and kicked him in his head, stomach and back. The boy reported that respondent was intoxicated at the time of this incident (R. 540-547).

A complaint of assault against respondent was immediately lodged with the Savannah police by young Bolton (R. 548). When the boy and a white police officer went to respondent's premises to serve the warrant, they found him asleep in his chair and the officer supported the boy's contention that his employer appeared to have been drinking (R. 588, 591). Young Bolton's injuries required his hospitalization for a period of 48 hours and the physician who examined and treated him at the hospital testified that he was in a condition of shock, with head swelling and stomach and back tenderness and pain (R. 529-530).

Bolton's mother testified that after she had taken her son to the hospital and returned home, she received several threatening telephone calls and that when local police failed to respond to her request for help, she contacted petitioner Savannah Branch, NAACP (R. 503-509). Petitioner Law testified that as a result of Mrs. Bolton's request for help, a membership meeting of the Savannah Branch was called for the next night, at which it was determined to organize a campaign to withhold patronage from respondent because of his assault on the young Negro boy (R. 469-470). He further testified that in order to effectuate this plan, it was decided to place two pickets on each corner of the street surrounding respondent's market for the purpose of advising all potential customers that the pickets were not buying there because respondent had mistreated a Negro employee, and to request them also to withhold their patronage (R. 165, 470-478). The pickets were instructed to act in a courteous and orderly manner (R. 166, 477-478).

On the following day, pickets were stationed in accordance with this plan and the picketing continued until June 22, 1962, when the temporary injunction prohibiting their presence was entered.

Respondent testified that he at no time assaulted young Bolton, but had discharged him because he stole food (R.

389). He claimed that the picketing of his premises had seriously injured his business because it resulted in the refusal of patrons to enter his store. It was respondent's contention that this refusal was based upon fear caused by the congregation of persons in large numbers blocking the entrance to his market, threatening his employees, intimidating his customers and, on several occasions, acting violently (R. 393-394). However, respondent did not present any evidence that any of petitioners engaged in or authorized these actions or that they were physically present when they allegedly occurred. Respondent's five employees who also testified—over the continued objections of petitioners' counsel—as to threats, intimidation and violence by persons they called "pickets", were in no instance able to identify the perpetrators or the time the incidents occurred or to state that petitioners or anyone they recognized as a member of petitioner organizations were present when these incidents took place. On cross-examination, the testimony of respondent and his witnesses indicated they automatically assumed any "colored persons" seen in the vicinity of the market (which was in a Negro neighborhood) to be a "picket" (R. 193, 202-203, 266, 275, 319-323, 333, 364-365, 367-368, 404-405).

In rebuttal of respondent's claim that he had lost business as a result of the picketing, petitioners offered evidence to show that respondent's financial difficulties predated the picketing and were due to the competition of a new and more modern open-air market located across the street (R. 361, 397, 449).

At the close of respondent's case, and at the conclusion of their own, petitioners made motions to dismiss the petition for non-suit and for a directed verdict, arguing, *inter alia,* that petitioners had been engaged in a peaceful protest and were entitled to protection under the United States Constitution and that respondent had failed to prove any connection between petitioners and the illegal conduct which allegedly was the cause of his damage (R. 68-77). These

motions were all denied and the court proceeded to charge the jury that conspiracy and agency were inseparable in this case (R. 609); that it could find an illegal conspiracy among all petitioners on the basis of the evidence introduced as to the Savannah Branch meeting if it determined that the Branch members had not been justified in planning and executing a selective buying campaign because of an "individual altercation" between respondent and his young clerk (R. 609-610); that the jury could not view the picketing as constitutionally protected unless it found petitioners' version of the incident involving young Bolton to be true (R. 614-615); and that if the jury found the "mere presence" of the pickets had incited others unconnected with petitioners to illegal activity which harmed respondent, this would constitute sufficient evidence to hold petitioners legally responsible for respondent's injuries (R. 610-611). The jury then retired and returned a verdict in the amount of $85,793.05 as against all the original defendants.

In petitioners' subsequent motions for a new trial, in their appeal to the Georgia Supreme Court and in their motion for a rehearing to that court, they continued to urge as grounds for reversal that the inordinately large damage award constituted an attempt to limit their right to freedom of association, that the judgment constituted a denial of freedom of association and a deprivation of property without due process of law in violation of the Fourteenth Amendment and that there had been an abridgement of their right to picket peacefully under the First Amendment.

Reasons for Allowance of Writ

1. (a) The decision of the court below holds all the petitioners responsible for the alleged misconduct of persons not associated with or controlled by any of them. It affirmed a staggering judgment upon the assumption that

legitimate associational activities can be evaluated and penalized in the light of unforeseen later occurrences. Such a ruling represents a dangerous intrusion upon the First Amendment right to freedom of association as articulated in *Bates* v. *Little Rock,* 361 U. S. 516; *NAACP* v. *Button,* 371 U. S. 415; *NAACP* v. *Alabama,* 357 U. S. 449; and *NAACP* v. *Louisiana,* 366 U. S. 293.

This judicial deprivation of First Amendment rights is no less state action because this is a civil lawsuit between private parties. *Shelley* v. *Kraemer,* 334 U. S. 1. As this Court said in *New York Times* v. *Sullivan,* 376 U. S. 254, 265:

> It matters not that the law has been applied in a civil action . . . . The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised. See *Ex Parte Virginia,* 100 U. S. 339, 346-347; *American Federation of Labor* v. *Swing,* 312 U. S. 321.

The Supreme Court of Georgia fixed liability on petitioners for picketing respondent's market under two theories. First, petitioners would be responsible for the disorder of which respondent complained if some of them were present when it occurred (unless they could prove an intervening cause for the disturbance). Second, since misconduct occurred, petitioners must have conspired to commit it. In conformity with the first theory, the court approved the following charge to the jury by the trial judge:

> Did the pickets incite—were [sic] the fact that the pickets were there incite activity upon [sic] people who were not at all connected with the organization; and if that was incited by the pickets, *by their mere presence,* you could consider the pickets and the placing of the pickets as the proximate cause of what resulted. (Emphasis added) (R. 610-611).

It should be noted that there was no claim that the members of the Savannah Branch who were picketing

exhorted others to misconduct. The rule of law applied here is that petitioners were responsible regardless of the propriety of their own acts. This theory runs counter to the *ratio decidendi* of *Terminiello* v. *City of Chicago,* 337 U. S. 1, rehearing denied 337 U. S. 934, which held—in the context of freedom of speech—that the applicability of the First Amendment depended on the content of the speech and not the reaction of the audience. Thus, a speech urging others to illegal acts would not be protected, while an expression of dissident views without such urging would be privileged. This rationale is equally applicable to associational activities. *NAACP* v. *Button, supra,* at p. 430; *NAACP* v. *Alabama, supra,* at p. 460.

An attempt is made by the Supreme Court of Georgia to distinguish *Terminiello* (page 23a *infra*) by asserting that petitioners here had taken part in an illegal conspiracy. This conclusion is reached by reasoning backward. The existence of a conspiracy is inferred because of the disorder alleged to have taken place after the commencement of the picketing, and the prior scheduling of and attendance at a legitimate meeting is then labeled the formation of a plot. Unsupported allegations from respondent's petition are recited by the court as evidence:

> In response to the motion for rehearing, we wish to point out that a conspiracy to wrongfully, unlawfully and maliciously injure and damage plaintiff's business and put him out of business is charged against the defendants; that such conspiracy was formed at a mass meeting of the NAACP called by the defendants Law and Jandon, and that pursuant thereto picketing began the next day and continued until stopped by the Court. . . . (p. 22a, *infra*)

Questions of the admissibility of irrelevant evidence are resolved by assuming its relation to petitioners—the very fact in contention:

> Special grounds 5, 6, 7, and 8 objecting to testimony as to threats, acts of violence, cursing, use of

> vulgar language, and a pistol shot *by those picketing the plaintiff's place of business*, are without merit. (Emphasis added) (p. 20a, *infra*).

The court sums up its analysis of the record as follows:

> Counsel for defendant contends that the evidence did not show that the pickets placed by the N.A.A.C.P. committed the various acts outlined above. However, the evidence is undisputed that all was peace and quiet around plaintiff's place of business until the picketing began and it returned only after the defendants were enjoined from further picketing of the place. (p. 12a, *infra*)

This Court has made clear that ". . . a State cannot foreclose the exercise of constitutional rights by mere labels." *NAACP* v. *Button*, *supra*, at page 429. What the State of Georgia has attempted here through its judiciary is to call petitioners' conduct tortious and then use this label as a basis for invoking punitive measures against the NAACP and the Savannah Branch:

> . . . the pickets had no lawful or constitutional right to form a conspiracy to violate plaintiff's right to operate his business, where he was not infringing any of their rights, or to force him out of business as punishment for committing a misdemeanor upon one of his employees . . . (p. 23a, *infra*).

Petitioners claim no "right to form a conspiracy", and the record demonstrates that no such conspiracy existed. The meeting of the Savannah Branch was called to discuss charges of racial discrimination against respondent and to plan a lawful method of communicating these charges to the consumer public (R. 469-470, 478). The Supreme Court of Georgia cannot, by the use of the word "conspiracy", suppress group advocacy of legitimate ends.

If the opinion below is sanctioned by this Court, it will operate as a prior restraint on organizational activity in

the same manner as a state statute which makes mere attendance at a meeting illegal if disorder occurs at a later time. Such a result would vitiate the assurances in *Thomas* v. *Collins*, 323 U. S. 516, that peaceful assembly cannot be unlawful. As this Court made clear in *Thornhill* v. *Alabama*, 310 U. S. 88, 101, the First Amendment right of an individual or group to make public all matters of public concern may not be stifled by "previous restraint or fear of subsequent punishment."

(b) The judgment below further encroaches upon freedom of association because of the inordinately large damage award upheld by the Georgia Supreme Court. A dying business is awarded $35,793.05 in compensatory damages, and in addition punitive damages in the amount of $50,000.00 are affirmed despite a complete absence of proof that there was anything malicious in petitioners' conduct. Here again the court finds "evidence" of malicious intent by recording in its opinion allegations from respondent's petition as though they had been proven:

> At the meeting, the defendants *unlawfully, knowingly, and with malice* and the intention of putting plaintiff out of business, organized what they termed a 'Selective Buying' campaign to begin the next day at plaintiff's place of business . . . (Emphasis added) (p. 5a, *infra*).

Although the court states that there was no evidence that respondent's employee was beaten because he was a Negro (at page 24a, *infra*), it is clear that it was the belief of the Savannah Branch that race was the deciding factor (R. 469). Since respondent's customers were largely drawn from the Negro community, the maltreatment of a Negro boy would be of particular relevance to them. In the view of the Georgia Supreme Court, however, protest of such an incident would be malicious and justify the huge verdict here in issue.

The appellate court's rationale is in conflict with this Court's past holdings. As was said in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, 561:

> . . . [T]he removal of discrimination . . . is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation.

The fact that the damage award was affirmed without even an attempt to apportion it among the petitioners, despite the fact that there was no testimony concerning the involvement of petitioner Jaudon and the NAACP in New York in the picketing, is a further indication that it was the identity of petitioners and the nature of their aims which dictated the result.

This Court recognized in *New York Times Co.* v. *Sullivan, supra,* at p. 277, that the fear of damage awards "may be markedly more inhibiting than the fear of prosecution under a criminal statute." It was noted that the award given was disproportionate and unrelated to actual pecuniary loss. The effect of such judgments, whatever their ostensible basis, is to create "an atmosphere in which the First Amendment freedoms cannot survive." (*ibid.*).

Under the rule of law developed in the instant case, huge damage awards can be given in the State of Georgia whenever a commercial establishment claims that profits have been lost pursuant to selective buying campaigns (since economic damage *per se* gives rise to the inference of malice). The Georgia Supreme Court's affirmation of the proceedings below, which were in derogation of the rules of evidence, the laws of logic, and the United States Constitution, can only serve as an invitation to state

courts to expand the use of civil judgments to penalize legitimate group advocacy.

2. While it is petitioners' contention that to hold any of them legally responsible for respondent's injuries is to violate First Amendment rights, the finding of liability as to the NAACP, a New York corporation (the judgment as against the Georgia State Conference of Branches having been reversed) raises separate constitutional issues which require scrutiny by this Court. The record shows that the NAACP was unaware of the Savannah Branch meeting and of the picketing until it was served with the injunction papers (R. 182-184). NAACP branches are merely affiliates to which charters are issued. Under the charter, the NAACP would not have been advised of this action until the local branch submitted its annual report. It is thus difficult to apprehend the basis upon which a national organization can be held responsible for the program organized by one of its more than 1500 branches concerning a purely local matter.[1]

The Georgia Supreme Court relied heavily on the NAACP's decision to defend this litigation on its merits rather than to contest the state court's jurisdiction:

> The national corporation never at any time disavowed the agency of Law, Jaudon, or the Savannah Chapter in acting for it in this matter. It was notified of the action by Law. It came into court and defended the case on its merits, contending that a cause of action was not alleged or proven against them. (at p. 15a, *infra*).

This Court made clear in *NAACP* v. *Button, supra,* that no group may be penalized merely for using the avenue of the courts as a means of seeking redress. In the instant

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[1] Apparently the appellate court was initially also concerned with the question of how legal responsibility could attach to the national NAACP because the clerk of that court did request supplementary briefs from respondent on that question.

case, moreover, the NAACP was brought in by respondent as a defendant. It chose to defend on the merits because of the constitutional issues to be clarified.

The other premise suggested by the court below as evidence of an agency relationship was the NAACP's failure to "repudiate" the actions of the branch (page 15a, *infra*). The court did not explain why such a repudiation would be required in the absence of any agency relationship. In effect, the State of Georgia is attempting to compel the NAACP to denounce the lawful acts of the Savannah Branch in order to avoid an unconstitutional financial assessment.

Such a flimsy basis for the deprivation of property, especially when considered in the light of its effect on future NAACP programs in Georgia, raises a serious due process question under the Fourteenth Amendment. See *Liggett* v. *Baldridge*, 278 U. S. 105; *Smyth* v. *Ames*, 169 U. S. 466, 522; *New State Ice Co.* v. *Liebmann*, 285 U. S. 262; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, 513.

3. (a). The decision of the court below represents a direct repudiation of the standards evolved by this Court in a series of cases starting with *Thornhill* v. *Alabama*, *supra*, which analyzed the circumstances under which picketing is viewed as a form of expression afforded protection under the First and Fourteenth Amendments to the Constitution.

The Georgia State courts have attempted to mask their rejection of this Court's holdings by unjustifiably labeling the picketing here as "unlawful" both in nature and in purpose, and by treating this case as one involving only questions of local state law. However, the record shows that the picketing here is not of the type found beyond the purview of constitutional protection in such cases as *Milkwagon Drivers* v. *Meadowmoor Dairies*, 312 U. S. 287 (violence found in mass picketing); *Giboney* v. *Empire*

Storage & Ice Co., 336 U. S. 490 (picketing found to be aimed at violation of state antitrust statute); *Hughes* v. *Superior Court of California*, 339 U. S. 460 (picketing to obtain quota for hiring Negro employees found violative of state policy); *Plumbers Union* v. *Graham*, 345 U. S. 193 (violation of state right-to-work law was purpose of picketing). It is important to note that in each of these cases the Court reviewed the record in order to determine whether the state court's finding of illegality was supported by the evidence:

> . . . it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. *Milkwagon* v. *Meadowmoor Dairies*, *supra*, at p. 293.

The trial court's rulings during trial, its charge to the jury, and the opinion of the court below show clearly that both courts consistently employed circuitous and illogical reasoning in an effort to support their theory that petitioners were responsible for violence allegedly leading to respondent's injuries. Throughout the trial, the court permitted the jury to hear testimony concerning alleged acts of misconduct over petitioners' standing objection that there was no connection shown between petitioners and the perpetrators of such disorder (*e.g.* R. 230-231, 237-238, 244-247, 288). It is significant that most of this testimony concerned misconduct by persons identified only as "colored" (*e.g.* R. 193-195, 321, 363, 401, 231-232). Since respondent did not contend that all Negro residents of Savannah were members of petitioner Savannah Branch, NAACP, and since respondent's store was located in a Negro residential area, it is difficult to understand how this identification solely on the grounds of race could aid the jury and its admission only appears calculated to in-

flame racial passions and thus prejudice petitioners in the eyes of the jury. Although the court below (p. 24a, *infra*) goes to some lengths to establish that the picketing here did not involve a "controversy between the races" and that "the relation between this white storekeeper and the negroes of this community were obviously friendly and cordial, for his business depended upon their friendship and good will" as support for its holding that "this is obviously not a case of peaceful picketing to protest racial discrimination", it does not comment at all upon petitioners' objections to the admission into evidence of these racial descriptions.

The court did not analyze the testimony concerning the Branch's picketing—two pickets were placed on each corner of the street around the market to inform consumers of the charges of racial discrimination against respondent (R. 165, 470-478). Nor did the court comment on the instructions to the pickets to act in a courteous and orderly manner (R. 166, 477-478). However, it affirmed that petitioners were the "proximate cause" of the disorder alleged by respondent, and held the picketing to be illegal.

The purpose of the picketing was also ruled to be without constitutional support:

> . . . the sole purpose of the picketing of plaintiff's place of business was to injure and damage his business, as punishment of him for the alleged beating of a negro boy who worked for him . . . (p. 10a, *infra*).

The distortion in this description is easily seen when the testimony of the only witnesses who were present at the meeting is reviewed. Petitioners Law and Jaudon testified without contradiction that the decision to picket respondent's market was made only for the purpose of advising respondent's potential customers that respondent had assaulted a Negro employee and to urge them therefore to withhold patronage from him (R. 470, 478, 185-186). Such

picketing by members of a legitimate group for the purpose of disseminating information and attempting persuasion is of the same calibre as the picketing found entitled to constitutional protection in such cases as *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293; *New Negro Alliance* v. *Sanitary Grocery Co., supra; Senn* v. *Tile Layers Protective Union*, 301 U. S. 468; *Ex Parte Lyons*, 81 P. 2d 190 (1938); *Rosman* v. *United Strictly Kosher Butchers*, 164 Misc. 378, 298 N. Y. Supp. 343 (1937). It can no longer be questioned that the objective of "equality of treatment by all government, federal, state, and local, for the members of the Negro community in this country" is lawful. *NAACP* v. *Button*, at p. 429.

Nor can the court sanction punitive measures against petitioners on the ground that picketing may cause economic damage. As was said in *Thornhill* v. *Alabama, supra* at p. 104:

> . . . effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society.

It is apparent that the approach employed by the state courts in the case at bar is one of pre-*Thornhill* days when picketing was considered a tort and unwarranted interference with private property rights. Since petitioners are certainly not in direct economic competition with respondent, application of restraint of trade statutes or policies are clearly inapposite. See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469; *Rice* v. *Asheville Ice Co.*, 169 S. E. 707 (1933); *Dallas General Drivers* v. *Wamix, Inc.*, 295 S. W. 2d 873 (1956); *Lineberger* v. *Colonial Ice Co.*, 17 S. E. 2d 502 (1941). To allow this rationale to stand with-

out review by this Court is to permit serious inroads to be made on established constitutional rights.

This Court has previously granted certiorari in a case involving picketing of a commercial establishment to protest racial discrimination. *NAACP* v. *Webb City*, 375 U. S. 939. Although this case was later dismissed for mootness, 376 U. S. 190, the issues raised are again present here and in view of the $85,000.00 damage award, no question of mootness exists.

(b) The state courts have abrogated this Court's holdings in yet another respect. The Supreme Court of Georgia affirmed the trial judge's charge to the jury that unless it found petitioners' contention that respondent had assaulted his Negro employee to be true, petitioners could not claim First Amendment rights. The court also approved the further charge that if the jury found petitioners had *believed* the assault had occurred it could consider this as evidence of petitioners' good faith in mitigation of damages, but not as justification for affording the picketing constitutional protection (R. 614-615). Such a charge is clearly improper. Cf. *New York Times* v. *Sullivan, supra.*

The record shows that petitioners did not picket respondent out of malice or on a frivolous whim. It is undisputed that petitioners were advised by Bolton's mother of the incident as recited by the boy, and that he reported the incident to his school principal and returned to confront respondent accompanied by a local policeman. Whether young Bolton's story or respondent's version is absolute truth is not at issue. There need only be sufficient evidence that the picketing was not instituted for an unlawful purpose. *Cafeteria Employees Union* v. *Angelos, supra*; *1621, Inc.* v. *Wilson*, 402 Pa. 94 (1960); *Julie Baking Co.* v. *Graymond*, 152 Misc. 846, 274 N. Y. Supp. 250 (1934).

A group which questions majority positions and beliefs is unlikely to win a jury to its side of a controversy. Thus,

it is not difficult to predict that the establishment of a rule of law requiring jury approval of the merits of such a controversy would lead to the vitiation of free speech and the standardization of ideas—precisely what the First Amendment was created to prevent. Cf. *Staub* v. *City of Baxley*, 355 U. S. 313, 322.

As this Court said in *NAACP* v. *Button*, *supra*, at page 345: "For the Constitution protects expression and association without regard to . . . the truth, popularity or social utility of the ideas and beliefs which are offered."

CONCLUSION

For the foregoing reasons, petitioners respectfully submit that this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of Supreme Court of Georgia

Decided: April 20, 1965.

1. (a) Every individual has a natural right to pursue a lawful occupation and to conduct his business according to his own plans and policies, where he does not offend the law or unlawfully infringe upon the rights of others. A person's business is property in the pursuit of which he is entitled to protection from tortious interference by a third person, who, in interfering therewith, is not acting in the exercise of some right.

(b) Plaintiff's petition alleging that he was operating a lawful business in a lawful manner and had not infringed upon the rights of the defendants, and that the defendants formed a conspiracy to damage and destroy his business as punishment of him for allegedly beating a fourteen year old negro employee, by picketing his store, and did pursuant to the unlawful conspiracy organize and conduct mass picketing of his store, where large numbers of pickets gathered around the premises, obstructed and interfered with the use of the public sidewalks and streets and entrance to plaintiff's store, harassed, intimidated and threatened customers who attempted to enter the store, and encouraged and induced the public to boycott his business and his employees to leave his employ, all of which was a part of the unlawful, wilful and malicious conspiracy to damage his business and to force him out of business, which did injure and damage his business, stated a cause of action for injunction and damages.

(c) Peaceful picketing for a lawful purpose is protected under the free speech provisions of the Constitutions of the United States and of Georgia, but mass picketing by use of force, violence, and intimidation, harassment and other like activities is not peaceful picketing such as enjoys constitutional protection, nor does the protection

extend to malevolent picketing for the sole purpose of punishing one who is accused of committing an assault and battery upon an employee, nor to picketing by the use of force, intimidation, violence or threats thereof to prevent or attempt to prevent any employee from continuing in the employ of his employer.

2. The court did not err in overruling the special demurrers for reasons set out in the opinion.

3. (a) As to the general grounds of the motion for new trial, the evidence amply supported the allegations that the picketing was not peaceful and was for an unlawful purpose.

(b) The evidence was sufficient to authorize the jury to find that an unlawful conspiracy to injure and damage plaintiff's property was formed by the defendants, Law, Jaudon, and other members of the Savannah Chapter of the N.A.A.C.P. acting as agents of the N.A.A.C.P. New York corporation and within the scope of their agency and that the conspiracy was carried out resulting in injury and damage to the plaintiff's property.

(c) There is no evidence to support the finding that the defendant, the Georgia State Conference of Branches of the N.A.A.C.P., participated in the conspiracy to picket and injure plaintiff's property or was in any way responsible for any damage done.

4. (a) The evidence amply supports the jury's award of compensatory damages in the amount of $35,793.05.

(b) The evidence of wilful, deliberate, wrongful and unlawful picketing of plaintiff's business causing great injury and damage to his property, was sufficient to authorize the jury to award punitive damages, *Code* § 105-2002; and

this court cannot say that the amount awarded was excessive, as punitive damages are fixed by the enlightened conscience of an impartial jury, and, the jury's verdict will not be disturbed by this court as the amount awarded would not justify an inference of "gross mistake or undue bias." *Code* § 105-2015.

5. For reasons set out in Division 5, the court did not err in overruling the twenty-five special grounds of the motion for new trial.

The plaintiff, Haldred Overstreet, brought his petition, as amended, in the Superior Court of Chatham County against the National Association for the Advancement of Colored People, hereafter designated N.A.A.C.P., a New York corporation doing business in Georgia, the Georgia State Conference of Branches of the N.A.A.C.P., an affiliate of the New York corporation of the N.A.A.C.P., the Savannah Branch of the N.A.A.C.P., an affiliate of the New York corporation of the N.A.A.C.P.; W. W. Law, individually and as President of the Georgia and Savannah affiliate of the N.A.A.C.P. corporation of New York, and F. D. Jaudon, vice-president of the Savannah and Georgia affiliates of the New York corporation of the N.A.A.C.P., and as representatives of the classes composing all members of the N.A.A.C.P., alleging a conspiracy among said defendants and all those represented by them to destroy plaintiff's business, the operation of a retail grocery store in Savannah, by picketing the store premises and inducing others to refrain from patronizing the establishment. The petition prayed for a temporary and permanent injunction and for compensatory and punitive damages. The defendants filed general and special demurrers to the petition as amended, and a motion to dismiss, which, with the exception of two special demurrers, were overruled. At the close of plaintiff's evidence, motions for nonsuit were made as to the defendants, the N.A.A.C.P., incorporated, the

Georgia State Conference of Branches of the N.A.A.C.P., and the Savannah Branch of the N.A.A.C.P., which motions were denied. The jury awarded the plaintiff compensatory damages in the amount of $35,793.05 and punitive damages of $50,000.00, a total of $85,793.05 and found for a permanent injunction. The exceptions are to the judgment of the trial court overruling the special and general demurrers and the motion to dismiss the petition, denying the motions for nonsuit, and the overruling of the defendants' motions for new trial on the general and special grounds.

MOBLEY, Justice. 1. (a) All the defendants were represented by the same attorneys and the defensive pleadings were in material respects the same. The rulings made here apply to each and all, as did the judgments of the trial court.

In brief, the petition as amended alleged that plaintiff owned and operated a retail grocery store at a named location in Savannah and had for 16 years, and had created good will and good faith in the course of his business with the public; that on May 30, 1962, he had in his employ a 14 year old Negro boy, who, one of his clerks advised him, had stolen some grocery items; that he admonished the boy and discharged him, and within about two hours, the boy and a police officer returned to the store and the boy accused him of beating him; that the boy's aunt on the same day swore out a warrant against him for assault and battery, and he charged the boy with stealing. That on the next night, May 31, 1962, at a named church of which F. D. Jaudon was pastor, there was a mass meeting of the N.A.A.C.P. and the Savannah Branch of the N.A.A.C.P. called pursuant to circulars distributed to members at the direction of Law to protest the alleged "beating of a fourteen (14) year old negro boy by the owner of the Tropical Fruit Market." Present were the defendants

Law and Jaudon, the defendant, Law, appearing and acting as agent of the N.A.A.C.P., as its agent, employee and servant, within the scope of his agency, employment, and service, and in the furtherance of the business of the corporation and in a like capacity with the Savannah Branch and the Georgia State Conference of Branches of the N.A.A.C.P. At the meeting, the defendants unlawfully, willfully, knowingly, and with malice and the intention of putting plaintiff out of business, organized what they termed a "Selective Buying" campaign to begin the next day at plaintiff's place of business; that pursuant to said plan defendants caused pickets to be placed adjacent to his place, who stopped customers and prospective customers on their way to his place of business, told them of the beating of the boy and urged them not to trade with plaintiff; that the picketing consisted of mass picketing in that numbers of pickets gathered around the premises of plaintiff, obstructing and interfering with the use of the public sidewalks and streets and entrance to plaintiff's business. That said mass picketing was a part of the conspiracy of defendants to intimidate customers from entering plaintiff's store and to force, intimidate, and coerce him into going out of business. That the pickets are harassing and intimidating customers from going into plaintiff's store by creating an atmosphere of possible violence thereabout by having large numbers of pickets in and around plaintiff's premises, by stopping all customer's and inciting and inflaming them against plaintiff and by telling them false and misleading statements as to plaintiff's conduct, all of which caused his customers to be fearful of trading with him; that defendants encouraged and induced the public to boycott plaintiff's business in order to accomplish their unlawful purpose of putting him out of business; that when the picketing began more than 2/3rds of his customers were negroes, and defendants knew this and they, the defendants, initiated and carried on the

unlawful, wilful and malicious conspiracy with the intent and purpose to damage him in the pursuit of his lawful business; that defendant, Law, was the leader of the pickets, was instrumental in placing them, directed their method of operation and participated as a picket, all of which acts were performed as agent of the N.A.A.C.P., the Savannah Branch and the Georgia State Conference of Branches and within the scope of his agency; that all of the acts constituted a general malicious scheme and conspiracy to force plaintiff out of business and to hinder him in engaging in a lawful business. It was also alleged that the pickets threatened physical harm to plaintiff's employees in an attempt to force them to quit his employ in violation of *Code Ann.* 54-801 (Ga. L. 1947, p. 620). It is alleged that as a result of said conspiracy he suffered described pecuniary loss of money in the operation of his business, that the good will which he enjoyed had been destroyed, damaging him in the amount of $40,000. He also asked $50,000 punitive damages.

The petition alleges an unlawful conspiracy of the defendants to destroy the lawful business of the plaintiff, which resulted in loss of business and damages to his property. "Every agreement between two or more persons to accomplish a criminal or unlawful object, or a lawful object by criminal or unlawful means, is an unlawful conspiracy, and any person whose rights are injured by acts done in furtherance of such conspiracy has his action at law for redress in damages." *Brown & Allen* v. *Jacobs Pharmacy Co.*, 115 Ga. 429, 441 (41 S E 553, 57 LRA 547; 90 ASR 126); *Cook* v. *Robinson*, 216 Ga. 328 (1, 2) (116 S E 2d 742). "Malicious injury to the business of another will give a right of action to the injured party." *Southern R. Co.* v. *Chambers*, 126 Ga. 404 (1) (55 S E 37, 7 LRA (N S) 926); *Original Ballet Russe, Ltd.* v. *Ballet Theater Inc.*, 133 F 2d 187; *Shell Oil Co. Inc.* v. *State Tire & Oil Co.*, 126 F 2d 971; *Boston Casualty Co.* v. *Bath Iron Works Co.*, 136 F 2d 31. See also *DeFoor* v.

Stephens, 133 Ga. 617 (1) (66 S E 786). "Where one maliciously and wrongfully, and with the intent to injure another person's business prevents others from dealing with him and his business is thereby injured, the person thus injured has a cause of action against the person thus causing the injury, for the loss and damage sustained." *American Oil Co.* v. *Towler,* 56 Ga. App. 866 (194 S E 223) citing *Brown & Allen* v. *Jacobs Pharmacy Co., supra.*

In 9 A L R 2d 228 in an exhaustive annotation dealing with "liability of one who induces or causes third person not to enter into or continue a business relation with another," it is said at p. 232 ". . . it would seem that the principle is generally recognized that a person's business is property in the pursuit of which he is entitled to protection from tortious interferences by a third person, who, in interfering therewith, is not acting in the exercise of some right, such as the right to compete for business" citing cases from many States, the United States Supreme Court, and this court.

"Every individual has a natural right to pursue a lawful occupation and to conduct his business according to his own plans and policies, where he does not offend the law or unlawfully infringe upon the rights of others." *Jones* v. *Van Winkle Gin & Co. Works,* 131 Ga. 336, 337 (62 S E 236, 17 LRA (N S) 848, 127 ASR 235). The plaintiff's business was a lawful business, was being operated in a lawful manner, and was property in which he had the right to protection in the use and enjoyment thereof. He had not in the operation of that business infringed upon the rights of the defendants. If he, as defendants contend, committed an assault and battery upon an employee, that is a criminal act, the punishment for which rests with the courts and not with individuals. Otherwise, we have anarchy. The alleged conspiracy to destroy his property by means of mass picketing of his store, intimidation and harassing of customers and employees simply because they may have thought he had

mistreated a negro employee was unlawful, *Jones* v. *Van Winkle Gin & Co. Works, supra*, (1); *Pedigo* v. *Celanese Corp.*, 205 Ga. 392, 397 (54 S E 2d 252), and constituted a tort against plaintiff by the conspirators for which they would be liable in damages, upon proper proof of the allegations.

Where, as here, a cause of action for damages for tort against the defendants is set out, the allegations showing a conspiracy make any actionable deed by one of the conspirators chargeable to all. *Cook* v. *Robinson*, 216 Ga. 328 (4), *supra* and cases cited therein. The liability is joint and several. *Smith* v. *Manning*, 155 Ga. 209 (2) (116 S E 813). A corporation may be a party to a conspiracy and may be held civilly liable for resulting damages to the same extent as a natural person. 16 Am. Jur. 2d 151 § 47. The allegations that the N.A.A.C.P. corporation, acting through its agents, conspired with others to damage and destroy plaintiff's business and performed described acts and did damage his property, stated a cause of action against the corporation as well as the individuals and the organizations which they represented and for which they acted. The trial court properly overruled the general demurrer to the petition, as amended, as to all the defendants.

1. (b) The motion to dismiss the petition on the ground that it failed to state a cause of action for the reason that the defendants have the right, protected by the Constitution of the United States, to engage in peaceful picketing and other forms of peaceful activity designed to persuade the public not to patronize a commercial establishment that practices racial discrimination, and that in engaging in these activities the defendants were exercising a right of freedom of speech and assembly guaranteed by the due process clause of the 14th Amendment to the United States Constitution, and the Constitution of Georgia is without merit.

First, there is no allegation that the plaintiff practised racial discrimination, nor any facts alleged from which such conclusion could be drawn. On the other hand, the petition alleges that more than 2/3rds of plaintiff's customers were negroes. The sole reason alleged for the picketing was the alleged assault and battery upon the 14 year old negro boy who worked for the plaintiff. It is not alleged that plaintiff was charged with beating the boy because he was a negro.

"The right to exercise freedom of speech by means of peaceful picketing carries with it no right to use force, violence, intimidation, harassment or the like. *Robinson* v. *Bryant*, 181 Ga. 722 (184 S E 298); *Local Union No. 3871, United Steel Workers of America* v. *Fortner*, 202 Ga. 206 (5) (42 S E 2d 734); *Burgess* v. *Ga. Fla. & Ala. R. Co.*, 148 Ga. 417 (96 S E 865); *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 206," *Pedigo* v. *Celanese Corp.*, 205 Ga. 392, 397, *supra*. The petition alleges the use of force, violence, intimidation, harassment and other like activities. Applicable here is the following from *Ellis* v. *Parks*, 212 Ga. 540, 542 (93 S E 2d 708): "The judicial theory that peaceful picketing is a form of free speech, as announced in Carlson v. California, 310 U. S. 106 (60 Sup. Ct. 746, 84 L. Ed. 1104), which is protected by the Constitutions, both Federal and State (Code Ann. §§ 1-801, 2-115), can not be stretched to malevolent picketing for the purpose of injuring the employer and aiding an unlawful strike. Both the Supreme Court of Georgia and the Supreme Court of the United States have held that a person can not employ lawful acts for spite and solely for the purpose of injuring another, and that such malicious purpose renders the acts unlawful. *Hornsby* v. *Smith*, 191 Ga. 491 (13 S. E. 2d 20, 133 A. L. R. 684); American Bank &c. Co. v. Federal Reserve Bank, 256 U. S. 350 (41 Sup. Ct. 499, 65 L. ed. 983, 25 A. L. R. 971)." See

also *Fleming* v. *H. W. Ivey Const. Co. Inc.*, 215 Ga. 460, 462 (2) (111 S E 2d 97); *Curry* v. *Construction & General Laborers Union Local No. 438*, 217 Ga. 512 (123 S E 2d 653). Where, as alleged here, the sole purpose of the picketing of plaintiff's place of business was to injure and damage his business, as punishment of him for the alleged beating of a negro boy who worked for him, the picketing is unlawful and not protected under the free speech provisions of the Federal and State Constitutions.

The picketing alleged here was unlawful for the further reason that it was in violation of *Code Ann.* §§ 54-801, 54-805 (Ga. L. 1947, pp. 620, 621) which provide: "It shall be unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence, or threats thereof, to prevent or attempt to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer, or from entering or leaving any place of employment of such employer" (§ 54-801). "It shall be unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence, or threats thereof, to prevent or attempt to prevent any employer from lawfully engaging or continuing to engage in any proper and lawful business activity, or from the proper, lawful or peaceable use or enjoyment of his property used or useful in the conduct of such business, or from acquiring materials or supplies for the purposes of such business, or from disposing of the goods, wares or products of such business, or to prevent or attempt to prevent any carrier or other person from supplying or delivering materials or supplies to any such employer, or from receiving or accepting delivery on the premises of such business of the goods, wares or products of such business" (§ 54-805). "It is a penal offense in this State to attempt by threats, violence, intimidation, or other unlawful means to prevent any person from engaging

in any lawful employment. . . ." *Robinson* v. *Bryant,* 181 Ga. 722, 728, *supra.* See *Code Ann.* § 66-9906 (Ga. L. 1887, p. 107); *Woodard* v. *Collier,* 210 Ga. 239 (78 S E 2d 526); *Powers* v. *Courson,* 213 Ga. 20 (96 S E 2d 577). The trial court committed no error in overruling the motion to dismiss the petition.

2. The trial court did not err in overruling the special demurrers numbers 3, 4, and 5. Special demurrers 1 and 2 were sustained by the trial court. Special demurrer 3 complains that the petition does not allege facts showing that any of the defendants committed alleged unlawful acts of harassing and intimidating customers of plaintiff by creating an atmosphere of violence around his place of business. The petition alleges a conspiracy among the defendants and others and that the defendant, Law, acting for the N.A.A.C.P., organized, directed and actually participated in the picketing, and that the pickets did harass and intimidate plaintiff's customers. The act of any conspirator would be the act of all engaged in the conspiracy, thus the allegation is sufficient. Special demurrer 4 complaining that the time and place the alleged acts of the pickets in threatening physical harm to plaintiff's employees occurred is not alleged is without merit, as the petition sets out the place, plaintiff's store, and the time—the period from May 31, 1962 when the picketing began to June 22, 1962 when it was stopped by injunction. Special demurrer 5 was met by amendment alleging facts called for by the demurrer.

3. Motion for new Trial.

(a) General grounds. The evidence was amply sufficient to establish the allegations of the petition that the defendants Law and Jaudon and other members of the N.A.A.C.P. formed a conspiracy among themselves to in-

jure and damage plaintiff's business and to seek to put him out of business by picketing his place of business as punishment of him for (as they claim) beating a 14 year old negro boy who worked for him. Law testified that he selected the pickets, placed them at designated points around plaintiff's store, and maintained them there until enjoined by the court and that he himself served on the picket line from time to time. Large numbers of people joined in the picketing, at times blocking the sidewalks and making it necessary for plaintiff's employees and customers to walk in the street and blocking their entrance or making it difficult to enter. There was also evidence of mass picketing of the plaintiff's place of business effected by surrounding the premises and sidewalks adjacent thereto with large numbers of people, so as to prevent persons from entering his store, by creating an atmosphere of violence around the premises by inciting, inflaming, and prejudicing customers all of which caused customers to be fearful of doing business with him. The plaintiff and his wife and employees were threatened with violence, called vile and vulgar names. Bricks and rocks were thrown through the windows and onto the roof. A pistol was shot from the vicinity of the picket line, the bullet passing over the head of a customer who lived directly back of the store. The employees were threatened with physical harm if they continued to work for plaintiff.

Counsel for defendant contends that the evidence did not show that the pickets placed by the N.A.A.C.P. committed the various acts outlined above. However, the evidence is undisputed that all was peace and quiet around plaintiff's place of business until the picketing began and it returned only after the defendants were enjoined from further picketing of the place. The evidence was sufficient for the jury to conclude that as a result of the mass meet-

ing of the N.A.A.C.P. the picketing began, that the picketing was led by pickets placed on the picket line by Law, that they were joined by large numbers of sympathizers or other members of the conspiracy, and that the presence of the pickets brought about mass picketing, threats, violence, the use of vile, vulgar and indecent language toward plaintiff, his wife, employees and customers. The picketing was not peaceful, thus unlawful; and it was for an unlawful purpose—punishment of plaintiff for the alleged commission of a criminal offense, assault and battery.

(b) In determining whether there was sufficient evidence to establish a cause of action as against the defendants, the Savannah Chapter of the N.A.A.C.P., the N.A.A.C.P. corporation of New York, and the Georgia Conference of Branches of the N.A.A.C.P., it must be determined whether there is evidence that the defendants Law or Jaudon were acting as agents of said defendants. The evidence shows that the defendant Law was President of both the Savannah Branch and of the Georgia State Conference of Branches of the N.A.A.C.P., a New York corporation. Acting in that capacity he, by means of the circulars, called a mass meeting of the N.A.A.C.P. and of the Savannah Chapter of the N.A.A.C.P., in which meeting he and Jaudon participated and led the group in reaching the conclusion that the N.A.A.C.P. would picket the plaintiff's place of business with the view of injuring and damaging his business by inducing customers and prospective customers to refrain from trading with him; and, pursuant thereto, Law selected pickets, placed them at various places around plaintiff's place of business, picketed himself, and generally directed the picketing. "The function of the N.A.A.C.P.," according to Law, "is to give aid and assistance to people in the minority group, meaning the negro group in seeking their rights and protection under the Constitution." In furtherance of that plan

the N.A.A.C.P. corporation of New York acts and operates in Georgia through the Savannah Chapter and other chapters, which compose the defendant, Georgia State Conference of Branches of the N.A.A.C.P. The petition was served upon the N.A.A.C.P. corporation, the Savannah Branch, and the Georgia State Conference of Branches of the N.A.A.C.P. by serving Law, as their agent. No plea to the jurisdiction or traverse of service was filed by any defendant, but each submitted to the jurisdiction of the court by filing answers, not made subject to their general demurrer, which alleged that the plaintiff did not state a cause of action against the defendant.

The Savannah Branch used the corporate name, N.A.A.C.P., and held itself out as representing the national corporation. The national corporation gave orders and counsel to its local representatives at annual conventions; the locals were affiliated with the national organization, and under its corporate charter, were units thereof; one paying dues to the local N.A.A.C.P. also became a member of the national N.A.A.C.P.; members of the local were members of the national N.A.A.C.P. and a portion of the dues went to the N.A.A.C.P. corporation. These facts evidence that the locals are within the framework of the national organization and are used in furtherance of the latter's business and interest. "The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf." *Code* § 4-101. A contract or an express agency agreement is not necessary to establish the relation. *Hubert* v. *Harpe,* 181 Ga. 168, 169 (182 S E 167). "The fact of agency may be established by proof of circumstances, apparent relations, and the conduct of the parties. . . ." *Cable Co.* v. *Walker,* 127 Ga. 65 (1) (56 S E 108), and "A claim of agency may be established by circumstantial evidence. . . ."

Universalist Convention v. *Guest,* 179 Ga. 168 (2) (175 S E 466) and cases cited.

The national corporation never at any time disavowed the agency of Law, Jaudon, or the Savannah Chapter in acting for it in this matter. It was notified of the action by Law. It came into court and defended the case on its merits, contending that a cause of action was not alleged or proven against them.

If Law originally acted without authority and assumed to act for them without authority, they had the option to repudiate or ratify the act, but they were required to do one or the other. And where, as here, they never repudiated the act, they are deemed to have affirmed it. See Mechem, Outlines of Agency (3rd Ed.), p. 94, § 152, *Southern Motors of Savannah* v. *Krieger,* 86 Ga. App. 574 (71 S E 2d 884); *Haney School Furn. Co.* v. *Hightower Bapt. Inst.,* 113 Ga. 289 (2) (38 S E 761); *Glisson* v. *Burkhalter,* 31 Ga. App. 365 (4) (120 S E 664).

We are of the opinion that the record supports the conclusion that Law acted as agent of the defendant's Savannah Chapter, and of the N.A.A.C.P. New York corporation, and within the scope of his authority in calling the mass meeting, holding the meeting, in concluding to picket plaintiff's store and in picketing it, causing injury and damage thereto.

(c) We do not believe that the evidence is sufficient to render the defendant Georgia State Conference of Branches of the N.A.A.C.P. responsible for the acts of Law, Jaudon and other members of the Savannah Branch of the N.A.A.C.P. in picketing and damaging plaintiff's business. There is no evidence that that organization had anything to do with this matter. While Law was president of that defendant, there is no evidence that he purported to act for it in calling a mass meeting to deal with plaintiff or in carrying out the plan agreed upon to picket

plaintiff's business, nor that any other member purported to be acting as agent or in behalf of that defendant. So far as the record shows, no branches of the Georgia State Conference of Branches of the N.A.A.C.P. other than the Savannah Branch, participated in the conspiracy or authorized anyone to act for them, or ratified any acts of Law or anyone else who may have purported to act for them.

Thus we conclude that as to the Georgia State Conference of Branches of the N.A.A.C.P. the verdict was without evidence to support it, and that the court erred in not granting the motion for new trial as to this defendant. As to the defendants, Law, Jaudon, the Savannah Chapter of the N.A.A.C.P. and the N.A.A.C.P. corporation, the general grounds of the motion for new trial are without merit.

4. Compensatory and punitive damages.

(a) The jury awarded the plaintiff compensatory damages of $35,793.05 and punitive damages of $50,000.00.

Plaintiff alleged and the evidence supported the allegations that his net income from his business for the twelve months preceding the picketing was $3,018.26 and he suffered a loss of $952.19 during the twelve months following the beginning of the picketing, or a net loss of $3,970.45, which was the result of defendants' picketing his place of business; that the loss would have been much greater but for his action in terminating the services of seven of his eight employees and his wife and himself increasing their work at the store from three or four hours per day to twelve to fourteen hours. Plaintiff testified that he planned to continue in business for ten to twelve years, and his age and condition would support the conclusion that he could do so. It is uniformly recognized that good will is a species of property and constitutes a valuable asset of the business of which it is a part. 24 Am. Jur., 804, § 4.

"Good will is an attribute of a business. . . ." 24 Am. Jur., 807, § 10. "Good will is the favor which the management of a business wins from the public, and the probability that old customers will continue their patronage and resort to the old place." *Armstrong* v. *Atlantic Ice & Coal Corp.*, 141 Ga. 464, 466 (81 S E 212). The evidence shows conclusively that the plaintiff's business enjoyed the good will of the negro community prior to the picketing by defendants, as two of every three of his customers were negroes, and that the picketing of his store by defendants destroyed the good will of the negroes, as they stopped trading with him. To wrongfully injure and damage the good will of plaintiff's business gives a cause of action in tort for the resulting damage. In determining the value of the good will and the amount of damage thereto, the actual loss of earnings, as the proximate result of the tort, may be considered in determining the amount of damages to the good will of plaintiff's business. Thus, the evidence as to loss of earnings present and future and other evidence of damage to the good will of plaintiff's business caused by the illegal picketing thereof would support a finding that he suffered more than $40,000.00 in actual damages. The verdict of $35,793.05 as compensatory damages suffered by plaintiff was authorized by the evidence and was not excessive.

(b) This division has been re-written to include discussion of the complaints thereto made in the motion for rehearing. Punitive damages in the amount of $50,000 were awarded plaintiff by the jury. *Code* § 105-2002 provides: "In every tort there may be aggravating circumstances, either in the act or the intention, and in that event the jury may give additional damages, either to deter the wrongdoer from repeating the trespass or as compensation for the wounded feelings of the plaintiff." This court in the recent case of *Cook* v. *Robinson*, 216 Ga. 328, 332 (10)

supra, held that allegations of the petition that the defendants damaged petitioner in a named amount by their wilful, deliberate, wrongful and unlawful deeds, acts, etc., committed pursuant to a conspiracy among them to unlawfully ruin and destroy plaintiff's business, stated a cause of action for punitive damages, citing *Code* § 105-2002 and *Walker* v. *Grand International Brotherhood &c. Engineers,* 186 Ga. 811 (199 S E 146). The allegations of plaintiff's petition were substantially the same and stated a cause of action for punitive damages, and the evidence was sufficient to support same as shown by a review of the evidence on the general grounds in Division 3(a).

Plaintiffs-in-error complain for the first time in their motion for re-hearing of the court's charge on punitive damages. While the amended motion for new trial contains twenty-five special grounds, it did not contain one complaining of the charge on punitive damages. Thus the question was not submitted to the trial court, was not passed upon by that court, is not excepted to in this court, and thus under the law of this State cannot be considered by this court. Under the Constitution of this State, Art. VI, Sec. II, Paragraph IV, *Code* § 2-3704, this is a court alone for the trial and correction of errors of law from the superior courts and other named courts, and "The Supreme Court . . . shall not decide any question unless it is made by a specific assignment of error in the bill of exceptions . . ." *Code Ann.* § 6-1607 (Ga. L. 1892, p. 113); *Brown Transport Corp.* v. *Truck Drivers & Helpers Local Union No. 728,* 218 Ga. 581, 584 (129 S E 2d 767) and cases cited.

Punitive damages are recoverable in this case under *Code* § 105-2002 either "to deter the wrongdoer from repeating the trespass, or as compensation for the wounded feelings of the plaintiff." The evidence would support the verdict on either theory. The plaintiff could not recover

for both, nor does the record indicate that the jury awarded punitive damages on both.

It is a question for the jury when punitive damages shall be allowed as well as the amount of such damages. *Batson* v. *Higginbothem,* 7 Ga. App. 835, 839 (2) (68 S E 455); *Kolodkin* v. *Griffin,* 87 Ga. App. 725, 731 (5) (75 S E 2d 197).

The measure of damages where punitive damages are recoverable is to be fixed by the enlightened conscience of an impartial jury. *Selman* v. *Barnett,* 4 Ga. App. 375 (2) (61 S E 501); *Head* v. *John Deere Plow Co.,* 71 Ga. App. 276, 279 (4) (30 S E 2d 662).

"The question of damages being one for the jury, the court should not interfere, unless the damages are either so small or so excessive as to justify the inference of gross mistake or undue bias." *Code* § 105-2015. See also *Lang* v. *Hopkins,* 10 Ga. 37 (3); *Adkins* v. *Williams,* 23 Ga. 222 (2); *Thorpe* v. *Wray,* 68 Ga. 359 (3a); *Realty Bond & Mort. Co.* v. *Harley,* 19 Ga. App. 186 (2) (91 S E 254); *Fields* v. *Jackson,* 102 Ga. App. 117 (1) (115 S E 2d 877). This court cannot say that the amount awarded as punitive damages is excessive.

5. Special grounds for new trial. Special ground 1. While it was not relevant in this case whether the defendant Law, as President of the Savannah Chapter and the Georgia State Branches of the N.A.A.C.P., had picketed on other occasions without first talking to and trying to negotiate their differences with the party to be picketed, his answer that that was generally their method and the reason it was not followed here was that the neighborhood was already incensed and the action they endorsed was already in progress, rendered the admission of the evidence harmless.

Special ground 2. The court did not err in permitting the witness to testify over objection that she was pregnant

when she was threatened by someone in the picket line, as the evidence showed that the picket line was established by the defendant Law, acting for the N.A.A.C.P. The fact that she was seven months pregnant and was threatened in that condition goes to the gravity of the picketing and would be material on the question of its unlawfulness.

Special ground 3. It was not error to admit, over the objection that none of the defendants were present, testimony of the witness as to threats and other remarks the negroes standing on the corner and across the street made to her when she traded at the store, as Law admitted that he assisted in placing the pickets on the picket line, and the evidence shows that several of the remarks were made by the pickets and others assisting them in picketing.

Special ground 4. The admission of the testimony objected to in special ground 4 was not error for any reason assigned.

Special grounds 5, 6, 7, and 8 objecting to testimony as to threats, acts of violence, cursing, use of vulgar language, and a pistol shot by those picketing the plaintiff's place of business, are without merit. As pointed out by the trial judge in overruling these grounds, it clearly appears from the evidence that the presence of the pickets incited acts of violence around the place and that if the presence of the pickets and what they told people brought about the situation of tenseness and lawlessness about plaintiff's place of business, the pickets and those responsible for them would be liable, if the picketing was not justified or amounted to mass picketing. This evidence was admissible on the question of liability of defendants for the damage done to plaintiff's business and responsibility of the defendants therefor.

Special grounds 10, 11, 12, 17, 18, 19, 20, and 21. The rulings heretofore made on direct exceptions to the denial of nonsuits and on the general grounds dispose of adversely to the plaintiff-in-error special grounds 10 and 11, complaining of the trial court's refusal to grant a non-suit, special ground 12 of failing to direct a verdict, and special grounds 17, 18, 19, 20, and 21 which complain that the verdict is contrary to law because it deprives defendants of their right to freedom of speech and of their property without due process of law in violation of the United States Constitution.

Special grounds 22, 23, and 24 complaining respectively of the charges "Before the plaintiff can recover, you must be satisfied that the preponderance of the credible evidence in this case showed that the defendants conspired to unlawfully injury (sic) plaintiff in his business and by illegal acts did in fact injured (sic) him;" "Now I charge you that one has a right to do business, and that right is a property right, and if that right is interfered with he can recover damages;" and, "But whatever your verdict is, it should be signed and dated by your foreman," are so obviously without merit they are overruled without discussion. Plaintiff-in-error did not argue them.

Special ground 14. It was not error to charge "as the court sees it, you can't get agency and conspiracy separated in this case," as the question was whether there was a conspiracy to violate plaintiff's rights by the N.A.A.C.P. defendants acting by and through their agents Law, Jaudon, and other members of the N.A.A.C.P.

Special ground 15. It was not error to charge the jury that "you can consider the effect of the picket. Did the pickets incite—were the fact that the pickets were there incite activity upon people who were not at all connected with the organization; and if that was incited by the

pickets, by their mere presence, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted." The court continued, "But if that was an entirely independent efficient cause that had nothing to do with the pickets, if you find that was true, of course the pickets nor the organizations who placed them there could be responsible. So you have to determine. Proximate cause is always a question of fact for the jury." The court's charge taken as a whole made it clear that if the picketing incited others, who were not pickets, to do acts against the plaintiff's business that the picketers would be a contributing proximate cause of what resulted, but if these were entirely independent efficient causes that had nothing to do with the pickets, the pickets would not be responsible therefor.

In response to the motion for re-hearing, we wish to point out that a conspiracy to wrongfully, unlawfully, and maliciously injure and damage plaintiff's business and to put him out of business is charged against the defendants; that such conspiracy was formed at a mass meeting of the N.A.A.C.P. called by the defendants Law and Jaudon, and that pursuant thereto picketing began the next day and continued until stopped by the court; and that there was violence, threats against plaintiff and his employees, bricks and rocks thrown into and on top of the store, blocking of the sidewalks and entrance to his store, mass picketing, harassment and intimidation of customers and employees, coming from the mass of negroes picketing the place, some of whom were admittedly those representing the defendants and placed there by Law. "The law recognizes the intrinsic difficulty of proving a conspiracy. . . . The conspiracy may sometimes be inferred from the nature of the acts done, the relation of the parties, the interest of the alleged conspirators, and other circumstances." *Woodruff* v. *Hughes*, 2 Ga. App. 361 (58 S E 551); *Horton* v. *John-*

son, 192 Ga. 338, 346 (15 S E 2d 605). "A conspiracy or common intent may be shown to have existed between the parties by proof of acts and conduct, *Davis* v. *State,* 114 Ga. 104 (39 S E 906); *Odum* v. *State,* 183 Ga. 854 (190 S E 25); and it may be shown by circumstantial or direct evidence. *McElroy* v. *State,* 125 Ga. 240 (2) (54 S E 125)." *Huckaby* v. *Griffin Hosiery Mills,* 205 Ga. 88, 91 (52 S E 2d 585). Applying those principles here, the evidence would authorize the jury to find that such violent and unlawful picketing was the proximate result of the conspiracy without specific proof that one or more of the pickets placed there by Law were the ones who threw the rock, or performed other specific acts of violence, intimidation, etc.

The principles enumerated in *Wright* v. *State of Georgia,* 373 U. S. 284; *Terminiello* v. *City of Chicago,* 337 U. S. 1, rehearing den. 337 U. S. 934; *Near* v. *Minnesota,* 283 U. S. 697; *Cantwell* v. *Connecticut,* 310 U. S. 296, cases relied upon by defendants in their motion for rehearing on this ground are distinguishable on their facts. The principle is explicitly stated and applied in *Wright* v. *Georgia, supra,* where the Supreme Court of the United States reversed this court, holding that the convictions of negro children playing in a park in Savannah, formerly used exclusively by whites, cannot be sustained on the ground that their presence there "was likely to cause a breach of the peace by others, since the possibility of disorder by others cannot justify exclusion of a person from a place where he had a constitutional right to be." There was disorder, violence, intimidation, etc. here—not the mere possibility of such; and furthermore, the pickets had no lawful or constitutional right to form a conspiracy to violate plaintiff's right to operate his business, where he was not infringing any of their rights, or to force him out of business as punishment for committing a misdemeanor upon one of his employees or prevent or attempt to prevent

his employees from continuing in his employ by intimidation, force or violence, etc.

This case does not involve a controversy between the races. The relation of this white storekeeper and the negroes of this community were obviously friendly and cordial, for his business depended upon their friendship and good will. He had both, as evidenced by the fact that more than two-thirds of his customers were negroes. He had built this good will over a number of years which must have required his good will toward them. The single incident, whether caused by plaintiff firing the boy or whipping him—whichever is true—and the evidence as to what occurred is inconclusive, would not justify the conclusion that the boy's race had anything to do with it. There is no evidence that what happened occurred because he was a negro. It might as well have happened to a white boy. This is obviously not a case of peaceful picketing to protest racial discrimination.

Special ground 16, complains that the charge set out above in the ruling on Special ground 15 that if the picketing by the N.A.A.C.P. incited others to join in and commit acts against plaintiff's business, that the act of the pickets would be the proximate cause of the injury deprived the Savannah Branch of the N.A.A.C.P. of freedom of association in violation of the 1st and 14th Amendments of the United States Constitution. The ground does not show that it violates defendant's rights of freedom of association, as contended.

Judgment Reversed as to the defendant, the Georgia State Conference of Branches of the N.A.A.C.P.

Judgment Affirmed as to all other defendants. All the Justices Concur.

APPENDIX B

Order of Supreme Court of Georgia Denying Rehearing, May 7, 1965

Upon consideration of the motion for a rehearing filed in this case it is ordered that it be hereby denied.

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SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET. AL.,

Petitioners

vs.

HALDRED OVERSTREET

BRIEF FOR RESPONDENT

In Response To

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

HUGH P. FUTRELL, JR.
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Petitioners

VS.

HALDRED OVERSTREET

BRIEF FOR RESPONDENT

In Response To

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Respondent prays that a writ of certiorari be denied to review the judgment of the Supreme Court of Georgia entered on April 20, 1965, and partially rewritten on May 7, 1965 at the time of denial of a rehearing, in the above-entitled cause.

Jurisdiction

Respondent respectfuly submits that a review of the record in this case by this honorable court will reveal that no rights, privileges and immunities conferred by the constitution of the United States upon the petitioners have been violated or are even involved in this case, and that petitioners have no right, in law or equity, legally, morally, or otherwise, to invoke the jurisdiction of this honorable court.

Questions Presented

Respondent contends that there are no questions of constitutional rights in this case, in which petitioners have brought a petition for writ of certiorari to this honorable court, but submit that if any constitutional questions are to be considered they are not as expressed by petitioners, but should be as follows:

1. Has the Supreme Court of Georgia violated petitioners' right to freedom under the first and fourteenth amendments by affirming the decision of the Superior Court of Chatham County, Georgia, which found, upon ample and sufficient evidence, that petitioners, without any legal or moral justification, organized an unlawful conspiracy to picket respondent's place of business in order to punish him and put him out of business for allegedly striking a Negro boy, and pursuant to such conspiratorial and unlawful picketing, did harass and intimidate respondent's customers from entering respondent's store by creating an atmosphere of possible violence thereabout by having large numbers of pickets in and around said business, by stopping, inciting, and inflaming said customers against respondent by telling them false and misleading statements as to respondent's conduct, and by committing violence in and around said premises during the course of said unlawful and unjustified picketing.

2. Has petitioner National Association For The Advancement of Colored People, a New York Corporation, been deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages in this case for organizing, through its agents, W. W. Law and F. D. Jaudon, president and vice-president respectively of the Savannah Branch, National Association For The Advancement of Colored People, a mass meeting of the N.A.A.C.P. and of the Savannah Chapter of the N.A.A.C.P., by means of libelous circulars, at which meeting the conclusion was reached because of an allegation that respondent had struck a Negro boy, to picket respondent's place of business with the view of injuring and damaging his business by inducing customers and prospective customers to refrain from trading

with respondent, when it has been proved that the function of the N.A.A.C.P. is to give aid and assistance to people in the minority, meaning the Negro group in seeking their rights and protection under the constitution, and that the N.A.A.C.P. acts and operates in Georgia through the Savannah Chapter and other chapters, and when it has been proved that the Savannah Branch used the corporate name, N.A.A.C.P. and held itself out as representing the national corporation, the N.A.A.C.P. gave orders and counsel to its local representatives at annual conventions, that the locals were affiliated with the N.A.A.C.P. and under its corporate chapter, were units thereof; that one paying dues to the local N.A.A.C.P. also became a member of the N.A.A.C.P.; that members of the local were members of the N.A.A.C.P. and that a portion of the dues went to the N.A.A.C.P.; and that the locals are within the framework of the N.A.A.C.P. and are used in the furtherance of its business and interest.

3. Have the rights of petitioners under the First and Fourteenth Amendments to the United States Constitution to express themselves through peaceful picketing been abridged by the issuance of an injunction against unlawful and mass picketing of respondent's business premises for the purpose of injuring and damaging respondent's business, said form of picketing being accompanied by threats, intimidation, and coercion of respondent's customers and threatened violence and actual violence being practiced around such premises, and the only reason assigned for such form of picketing being that the respondent was accused of striking a Negro boy who had been employed by him?

4. Have the rights of petitioners under the First and Fourteenth Amendments to advise the public through picketing of a grievance they believed to be genuine but which had no legal or moral justification, been abridged by requiring the jury to adjudicate the legitimacy of such grievance as a prerequiiste to finding the picketing to be entitled to constitutional protection?

STATEMENT

A. Prior Proceedings

Respondent agrees with petitioners' statement of prior proceedings.

B. Evidence Presented

Petitioner Law is a resident of Savannah, Chatham County, Georgia, and president of petitioner Savannah Branch of the N.A.A.C.P. and the Georgia State Conferences of Branches N.A.A.C.P. both of which are unincorporated bodies under charters granted by petitioner N.A.A.C.P., a New York corporation (R 152-154). Petitioner Reverend F. D. Jaudon is First Vice-President of the Savannah Branch, N.A.A.C.P. (R 185). The function of the N.A.A.C.P. is to give aid and assistance to people in the minority, meaning the Negro group in seeking their rights and protection under the constitution (R 468-469). The N.A.A.C.P. acts and operates in Georgia through the Savannah Chapter and other chapters; gives orders and counsel to its local representatives at annual conventions (R 153); the local branch is affiliated with the N.A.A.C.P. and under its corporate charter is a unit thereof (R 152-155); one paying dues to the Savannah Branch also becomes a member of the N.A.A.C.P.; members of the Savannah Branch are members of the N.A.A.C.P.; a portion of the dues paid by members of the Savannah Branch goes to the N.A.A.C.P.; and the Savannah Branch is within the framework of the N.A.A.C.P. and is used in the furtherance of its business and interest (R 499-500). The respondent is the owner and operator of an open air market located in a racially mixed residential area in Savannah (R 386).

On May 30, 1962, Robert Lee Bolton, a Negro boy of fourteen and respondent's only Negro employee among seven employees, reported to the principal at his school and to his mother and aunt that he had just been physically assaulted by respondent who had accused him of stealing merchandise from the market and had slapped him beside the head and kicked him in the side. The boy further reported that respondent was intoxicated at the time of this incident (R 540-547).

A complaint of assault against respondent was immediately lodged with the Savannah police by the aunt of the Bolton boy (R 506). When the boy and a Negro police officer went to respondent's premises they found him asleep in a chair and the officer stated that he appeared to have been drinking but was not drunk (R 588). The police officer further testified that if a person takes one drink, he would say that such person is under the influence (R 591). Several of respondent's employees stated that respondent was not drinking and respondent testifying in his own behalf stated that he had not been drinking. The physician who examined the Bolton boy said that he found a bruised area on the side of his temple and that he complained of a soreness in the back and a stomach ache, and that because of the difficulty in trying to control the boy with sedation, he kept him under observation in the hospital for forty-eight hours (R 529-430). The Bolton boy admitted that he had gone by a basketball court and played basketball with other boys before going to work that day (R 551-554). The principal of the Bolton boy's school testified that he had seen similar injuries as a result of boys participating in a basketball game (R 580).

Bolton's mother testified that after she had taken her son to the hospital and returned home, she received several threatening telephone calls, that she reported these calls to the police, and then contacted petitioners' Savannah Branch, N.A.A.C.P. (R 503-508). Respondent had already been arrested and taken to jail hours prior to such alleged telephone calls.

Petitioner Law testified that as a result of the mother of Bolton calling upon the N.A.A.C.P. to assist her in defending or protecting her child he called a meeting of the N.A.A.C.P. for the next night at which time it was determined to organize a campaign to withhold patronage from respondent because of his assault on the young Negro boy (R 469, 155, 469-470). He also testified that such meeting was held pursuant to a circular distributed during the day time prior to the meeting which read as follows: "NAACP mass meeting tonight, Saint Phillips Monumental AME Church on Park

Avenue and Jefferson Street, Reverend F. D. Jaudon, pastor at 8 o'clock, protesting the beating of a fourteen year old Negro boy by the owner of Tropical Market, 1601 Montgomery Street, corner of 32nd Street. Come get the truth about the brutality that sent this boy to the hospital where he remains a patient. Come tonight, 8:00 P.M. (R 156). He further testified that the wording of said circular had his approval (R 156). He further testified he nor any members of the board of directors or any member or official of the local N.A.A.C.P. ever discusesd anything about the incident with respondent at anytime (R 158). He also testified that the church was filled with people attending the meeting but could only identify four by name (R 492-496). He further testified that in order to effectuate the picketing plan it was decided to place pickets on each corner of the streets surrounding respondent's market for the purpose of advising all potential customers that the pickets were not buying there because respondent had mistreated a Negro employee, and to request them also to withhold their patronage (R 165, 470-478). On the following day pickets were stationed in accordance with the plan and the picketing continued until June 22, 1962 when a temporary injunction prohibiting their presence was entered.

Officer A. A. Liabastre testified that he received numerous calls to the area of respondent's market due to a large number of people participating in the picketing, to such an extent that it blocked street and sidewalk traffic. He further testified that an agrement was finally reached whereby two pickets would be stationed at each corner surrounding respondent's market.

Petitioner Law was at the scene of picketing many times, sometimes for short periods of time and at others for a long period of time (R 164).

There was a great deal of testimony as to the acts of violence that occurred in and about the Tropical Market after the picketing commenced by petitioners on June 1, 1962. Mrs. Lillian Phillips, witness for respondent, testified that prior

to May 30, 1962 there had been no disturbances, acts of violence or any trouble in or about the Tropical Market. She further stated that after the pickets were placed on the outside, two colored men entered the store and asked for Mr. Overstreet, your respondent, stating that hey had come o get him and that during this time crowds of colored people surrounded respondent's market. The witness further stated that she lived in the vicinity of the Tropical Market and prior to the picketing she was able to walk to work by herself but after the pickets were set up it was necessary for her husband or some other man to walk her to work. The reason she gave for this action was the crowds of Negroes on the corners adjacent to the Tropical Market would say to her as she went by "well, today is a fine day to get her" or "let's get her" or "why don't we get her today." On several occasions it was necessary for her to walk down the middle of the street immediately in front of respondent's market in order for her to get to the store (R 190-191). The pickets would yell or scream at potential customers entering the respondent's market that they, the customers, were not being fair to their color and that they should trade across the street at another market because respondent had beaten the colored boy (R 188-192).

Mrs. Phillips further testified that the picketers had cursed her and also stated that they were going to molest her but she did not use these words during the trial but indicated that profanity was used to suggest what they were going to do. Customers that came into the Tropical Market and made purchases would soon return after being accosted by the pickets on the outside and request their money back without reason, cause or justification and return the mechandise (R 192). Mrs. Phillips also identified one, Johnny Drayton, as being one of the picketers and also one of the ones that had made threats to her (R 194-198).

Mrs. Wilma Love, witness for respondent, stated that on several occasions she had heard threats made to potential customers of respondent's market and that she herself had been threatened by the pickets on one occasion when she

entered the market to do her shopping (R 230). Mrs. Love further stated that after the picketing had started and while she was on her back porch which adjoined respondent's market she heard a pistol shot from the direction of the area where the pickets were stationed (R 235-236). Bricks and sticks were thrown at respondent's market and upon the roof of the building (R 230-238, 248-252).

Mrs. Allie V. Cox testified that the person that had made the threat of assaulting her and Mrs. Phillips and cursing them was among the picketers and she had seen him among the picketers on several occasions. She stated further that during the time of the picketing she received several calls while on duty at respondent's market to the effect that there was a bomb planted within the market (R 228-292).

Hamp Wyre, accountant for respondent, testified to the gross income and net income for respondent's market prior to the picketing and also compared these figures with the gross income and net income subsequent to the commencement of the picketing which clearly showed the tremendous decrease in respondent's income due to the boycott by petitioners (R 440-443).

REASONS FOR DISALLOWANCE OF WRIT

1. The petitioners in this case had no lawful or constitutional right to form a conspiracy to violate respondent's right to operate his business, where he was not infringing on any of their rights, or to force him out of business as punishment for allegedly committing a misdemeanor upon one of his employees or prevent or attempt to prevent his employees from continuing in his employ by intimidation, coercion, force or violence.

This case does not involve a controversy between the races. The relation of respondent and the Negroes of the community in which his store was located were obviously friendly and cordial, for his business depended upon their friendship and good will. He had both, as evidenced by the fact that more than two-thirds of his customers were Negroes (R. 188).

He had built this good will over a number of years which must have required his good will toward them. The single incident which gave rise to their meeting and the subsequent picketing, whether caused by respondent firing the boy for stealing or beating him—whichever is true—and the evidence as to what occurred is inconclusive, would not justify the conclusion that the boy's race had anything to do with it. There is no evidence that what happened occurred because he was a Negro. It might as well have happened to a white boy. This is obviously not a case of peaceful picketing to protest racial discrimination.

The petitioners organized a conspiracy to wrongfully, unlawfully, and maliciously injure and damage respondent's business and to put him out of business. Such conspiracy was formed at a mass meeting of the NAACP called by the petitioners Law and Jaudon, and pursuant thereto picketing began the next day and continued until stopped by the court injunction. There was violence, threats against respondent and his employees, bricks and rocks thrown into and on top of the respondent's store, mass picketing, harassment and intimidation of customers and employees, coming from the mass of Negroes picketing the place, some of whom were admittedly those representing the petitioners and placed there by petitioner Law.

"The law recognizes the intrinsic difficulty of proving a conspiracy. The conspiracy may sometimes be inferred from the nature of the acts done, the relation of the parties, the interest of the alleged conspirators, and other circumstances." **Woodruff V. Hughes,** 2 Ga. app. 361 (58 S. E. 551); **Horton v. Johnson,** 192 Ga. 338, 346 (15 S. E. 2nd 605).

"A conspiracy or common intent may be shown to have existed between the parties by proof of acts and conduct, **Davis v. State,** 114 Ga. 104 (39 S. E. 906); **Odum v. State,** 183 Ga. 854 (190 S. E. 25); and it may be shown by circumstantial or direct evidence. **McElroy v. State,** 125 Ga. 240 (2) (54 S. E. 125)." **Huckaby v. Griffin Hosiery Mills,** 205 Ga. 88, 91 (52 S. E. 2nd 585).

Applying the above principles in this case, the evidence would authorize the jury to find that such violent and unlawful picketing was the proximate result of the conspiracy without specific proof that one or more of the pickets placed thereby petitioner Law were the ones who threw the rock, or performed other specific acts of violence, intimidation, etc.

It was said in **U. S. v. Borden**, 308 U. S. 188:

> The decision of the State Court that the alleged "peaceful picketing" was unlawful per se and inseparable from the unlawful conspiracy and other illegal acts of the petitioners in furtherance thereof, is not reviewable.

An important principle of constitutional law was enunciated in **Milkwagon Dairies v. Meadowmoor Dairies**, 312 U. S. 287, which except for the existence of an industrial dispute in said case is applicable to the situation in this case:

> "These acts of violence are neither episodic nor isolated. Judges need not be innocent of the actualities of such an industrial conflict as this record discloses as to find in the constitution denial of the right of Illinois to conclude that the use of force on such a scale was not the conduct of a few irresponsible outsiders. The Fourteenth Amendment still leaves the state ample discretion in dealing with manifestations of force in the settlement of industrial conflicts. And in exercising its power a state is not to be treated as though the technicalities of the laws of agency were written into the constitution. Certainly a state is not confined by the constitution to narrower limits in fashioning remedies for dealing with industrial disputes than the scope of discretion open to the national labor relations board. It is true of a union as of an employer that it may be responsible for acts which it has not expressly authorized or which might not be attributable to it on strict application of the rules of respondent superior."

It cannot be logically contended or argued that the purpose of the picketing in this case had any basis for justification whatsoever, either legal, equitable, moral, or otherwise. This

court recognized in **Gompers v. Bucks Stove & R. Co.**, 221 U. S. 418, that "the constitutional right of free speech cannot be invoked as a cloak for means used in effecting an unlawful interference with the right to carry on business."

> The constitutional right of free speech does not preclude an injunction against picketing in furtherance of an unlawful purpose, that is, one contrary to the public policy or statutory law of the particular jurisdiction. **Milkwagon Drivers v. Meadowmoor Dairies, Supra.**

Applicable here is the following from **Ellis v. Parks**, 212 Ga. 540, 542 (93 S. E. 2d 708:

> The judicial theory that peaceful picketing is a form of free speech, as announced in **Carlson v. California**, 310 U. S. 106 60 Sup. Ct. 746, 84 L. Ed. 1104), which is protected by the constitutions, both Federal and State (code ann. sections 1-801, 2-115), cannot be stretched to malevolent picketing for the purpose of injuring the employer and aiding an unlawful strike. Both the Supreme Court of Georgia and the Supreme Court of the United States have held that a person can not employ lawful acts for spite and solely for the purpose of injuring another, and that such malicious purpose renders the acts unlawful. **Hornsby v. Smith**, 191 Ga. 491 (13 S. E. 2d, 133, A.L.R. 684); **American Bank & C. Co. v. Federal Reserve Bank**, 256 U. S. 350 (41 Sup. Ct. 499, 65, L. Ed. 983, 25 A.L.R. 971).

Although constitutitonal issues are urged by petitioners in their petition for writ of certiorari, respondent cannot accept such assertions as predicated upon any basis of fact. This is simply a suit for compensatory and punitive damages brought by respondent for recovery of his losses sustained as the result of the malicious and unlawful conspiracy to put him out of business and the unlawful picketing carried on pursuant thereto. The compensatory damages were adequately proved and the punitive damages were fully justified by the aggravated and malicious acts.

2. It is petitioners' contention that the finding of liability as to the NAACP, a New York Corporation, raises separate constitutional issues which require scrutiny by this court. However, this contention is refuted by the evidence presented in the case. The evidence shows that the petitioner Law was president of both the Savannah Branch and of the Georgia State Conference of Branches of the NAACP, a New York Corporation (R-152). Acting in that capacity he, by means of circulars, called a mass meeting of the NAACP and of the Savannah Chapter of the NAACP, in which meeting he and Jaudon participated and led the group in reaching the conclusion that the NAACP would picket the respondent's place of business with the view of injuring and damaging his business by inducing customers and prospective customers to refrain from trading with him (R 163-164); and pursuant thereto, Law selected pickets, placed them at various places around respondent's place of business, picketed himself, and generally directed the picketing (R-164). "The function of the NAACP," according to Law, "is to give aid and assistance to people in the minority group, meaning the Negro group in seeking their rights and protection under the Constitution (R-469)."

The NAACP Corporation of New York acts and operates in Georgia through the Savannah Chapter and other Chapters (R-153). The petition was served upon the NAACP Corporation and the Savannah Branch, and the Georgia State Conference of Branches of the NAACP by serving Law, as their agent. No plea to the jurisdiction or traverse of service was filed by any petitioner for certiorari, but each submitted to the jurisdiction of the court by filing answers, not made subject to their general demurrers, which alleged that the respondent here did not state a cause of action against them.

The Savannah Branch used the Corporate name, NAACP and held itself out as representing the National Corporation (R-156). The National Corporation gave orders and counsel to its local representatives at annual conventions (R-153); the locals were affiliated with the National Organizations, and under its Corporate Charter, were units thereof (R-153); one

paying dues to the local NAACP also became a member of the National NAACP; members of the local were members of the National NAACP and a portion of the dues went to the NAACP Corporation (R-499-500). These facts evidence that the locals are within the framework of the national organization and are used in furtherance of the latter's business and interest (R-499-500). "The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf." **Ga. Code Sec. 4-101.** A contract or an express agency agreement is not necessary to establish the relation. **Hubert v. Harpe,** 181 Ga. 168, 169 (182 S. E. 167). "The fact of agency may be established by proof of circumstances, apparent relations, and the conduct of the parties . . ." **Cable Co. v. Walker,** 127 Ga. 65 (1) (56 S. E. 108), and "a claim of agency may be established by circumstantial evidence . . ." **Universalist Convention v. Guest,** 179 Ga. 168 (2) (175 S. E. 466).

The National Corporation never at any time disavowed the agency of Law, Jaudon, or the Savannah Chapter in acting for it in this matter. It was notified of the action by Law. It came into court and defended the case on its merits, contending that a cause of action was not alleged or proven against it.

If petitioner Law originally acted without authority and assumed to act for the National Corporation without authority, they had the option to repudiate or ratify the act, but they were required to do one or the other. And where, as here, they never repudiated the act, they are deemed to have affirmed it. See **Mechem, Outlines of Agency** (3rd Ed.), p. 94, sec. 152; **Southern Motors of Savannah v. Krieger,** 86 Ga. App. 574 (71 S. E. 2d 884); **Hany School Furn. Co. v. Hightower Bapt. Inst.,** 113 Ga. 389 (2) (38 S. E. 761); **Glisson v. Burkhalter,** 31 Ga. App. 365 (4) (120 S. E. 664).

It is respondent's contention that the record supports the conclusion that petitioner Law acted as agent of the NAACP's Savannah Chapter, and of the NAACP New York Corporation, and within the scope of his authority in calling the mass meeting, holding the meeting, in concluding to picket respondent's store and in picketing it, causing injury and damage thereto.

CONCLUSION

For the foregoing reasons, respondent respectfully submits that the petition for writ of certiorari should be denied.

Respectfully submitted,

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October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,
Petitioner,

v.

HALDRED OVERSTREET

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR PETITIONER

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IN THE

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No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

v.

HALDRED OVERSTREET

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Supreme Court of Georgia (R. 94-117) affirming and modifying the judgment of the trial court is reported at 221 Ga. 16, 142 S. E. 2d 816 (1965). The order of the Georgia Supreme Court denying defendants' motion for a rehearing (R. 120) is not reported.

Jurisdiction

The judgment of the Supreme Court of Georgia was entered on April 20, 1965 (R. 117). A motion for rehearing was denied on May 7, 1965 (R. 120). An extension of time until August 30, 1965, to file a petition for writ of certiorari was granted by Mr. Justice Black on July 30, 1965 (R. 120-121). Petition for writ of certiorari was filed on August 30, 1965, and certiorari was granted on December 6, 1965 (R. 121).

Question Presented

Whether petitioner National Association for the Advancement of Colored People, a New York corporation, has been deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control?

Statement

A. Prior Proceedings

Petitioner is the National Association for the Advancement of Colored People, a New York corporation (hereinafter called NAACP). It was tried with the Savannah Branch of the NAACP, two officers of the Savannah Branch individually, and the Georgia State Conference of NAACP Branches in November, 1963, in the Superior Court of Chatham County, in the State of Georgia, on a petition alleging conspiracy to destroy respondent's business by picketing his premises and inducing others to refrain from patronizing his establishment. The petition sought a temporary and permanent restraining order as well as compensatory and punitive damages. A temporary restraining order, entered on June 22, 1962, was made permanent by the jury after trial. The jury also awarded damages as against all of the original defendants in the amount of $85,793.05, consisting of $35,793.05 compensatory and $50,000 punitive damages. Thereafter, defendants filed a motion for a new trial based upon general grounds and on April 20, 1964 (additional time having previously been allowed by the trial court), twenty-four specific grounds were enumerated in an amendment to the original motion for a new trial. This motion was denied by the trial court on October 2, 1964. On appeal to the Supreme Court of Georgia, the clerk of that court by letter dated February 11, 1965, requested respondent to furnish supplementary

briefs on the liability of petitioner NAACP and Georgia State Conference of Branches and on the damage award (letter printed herein in Appendix). Thereafter, on April 20, 1965, that court affirmed the judgment as against two officers of the Savannah Branch, Mr. W. W. Law and Rev. F. D. Jaudon; the Savannah Branch of the NAACP; and the national office of the NAACP. It reversed as to the Georgia State Conference of Branches. Defendants' motion for a rehearing was denied by order dated May 7, 1965, and certain portions of the original opinion were rewritten but remained dated April 20, 1965. Mr. Justice Black granted petitioner's motion for an extension of time to file a petition for writ of certiorari until August 30, 1965. Certiorari was granted as to Question 2 in the petition on December 6, 1965.

B. Evidence Presented

Petitioner is a New York corporation. Mr. W. W. Law is a resident of Chatham County, Georgia, and President of the Savannah Branch of the NAACP and the Georgia State Conference of Branches, NAACP, both of which are unincorporated bodies (R. 51). Reverend F. D. Jaudon is First Vice President of the Savannah Branch, NAACP (R. 52). Respondent is the owner and operator of a retail open-air market located in a Negro residential area in Savannah.

On May 30, 1962, Robert Lee Bolton, a Negro boy of fourteen and respondent's only Negro employee, reported to the principal of his school and to his mother that he had just been physically assaulted by respondent who had falsely accused him of stealing merchandise from the market and had hit and kicked him in his head, stomach and back. The boy reported that respondent was intoxicated at the time of this incident. A complaint of assault against respondent was immediately lodged with the Savannah police by young Bolton. When the boy and a white

police officer went to respondent's premises to serve the warrant, they found him asleep in his chair, and the officer supported the boy's contention that his employer appeared to have been drinking. Young Bolton's injuries required his hospitalization for a period of forty-eight hours and the physician who examined and treated him at the hospital testified that he was in a condition of shock, with head swelling and stomach and back tenderness and pain. Bolton's mother testified that after she had taken her son to the hospital and returned home, she received several threatening telephone calls and that when local police failed to respond to her request for help, she contacted the Savannah Branch, NAACP.

Mr. W. W. Law testified that as a result of Mrs. Bolton's request for help, a meeting of the Savannah Branch was called for the next night, at which it was determined to organize a campaign to withhold patronage from respondent because of his assault on the young Negro boy (R. 52-53). He further testified that in order to effectuate this plan, it was decided to place two pickets on each corner of the street surrounding respondent's market to advise all potential customers that the pickets were not buying there because respondent had mistreated a Negro employee, and to request them also to withhold their patronage. The pickets were instructed to act in a courteous and orderly manner.

On the following day, pickets were stationed in accordance with this plan and the picketing continued until June 22, 1962, when the temporary injunction prohibiting their presence was entered.

Respondent testified that he at no time assaulted young Bolton, but had discharged him because he stole food. He claimed that the picketing of his premises had seriously injured his business because it resulted in the refusal of patrons to enter his store. It was respondent's contention that this refusal was based upon fear caused by the con-

gregation of persons in large numbers blocking the entrance to his market, threatening his employees and intimidating his customers. However, respondent did not present any evidence that the Savannah Branch, its officers and members, or the NAACP had engaged in or authorized the actions alleged or that they were physically present when they allegedly occurred. The only evidence connected with the Savannah Branch or its officers and members indicated that their behavior was entirely lawful (R. 55-58).

Both at the close of respondent's case, and at the conclusion of its own, petitioner made a motion to dismiss the petition for non-suit arguing that respondent had failed to prove any connection between petitioner and the illegal conduct which allegedly was the cause of his damage and that there was no proof that W. W. Law was an agent of petitioner or that any agent of petitioner had damaged respondent (R. 30). The motion was denied and the court proceeded to charge the jury that conspiracy and agency were inseparable in this case (R. 78); that it could find an illegal conspiracy among all defendants on the basis of the evidence introduced as to the Savannah Branch meeting, if it determined that the Branch members had not been justified in planning and executing a selective buying campaign because of an "individual altercation" between respondent and his young clerk (R. 78-79); that the jury could not view the picketing as constitutionally protected unless it found petitioner's version of the incident involving young Bolton to be true (R. 82-83); and that if the jury found the "mere presence" of the pickets had incited others unconnected with petitioners to illegal activity which harmed respondent, this would constitute sufficient evidence to hold petitioners legally responsible for respondent's injuries (R. 79). The jury then retired and returned a verdict in the amount of $85,793.05 as against all the original defendants.

In defendants' subsequent motions for a new trial, in their appeal to the Georgia Supreme Court and in their motion for a rehearing to that court, they continued to urge

as grounds for reversal that the inordinately large damage award constituted an attempt to limit the right of their members to freedom of association, that the judgment constituted a denial of freedom of association and a deprivation of property without due process of law in violation of the Fourteenth Amendment (R. 43-48, 90-94, 117-119).

Summary of Argument

The finding that the NAACP participated in an illegal conspiracy to damage respondent's business by virtue of the conduct of other defendants in this case, is completely unsubstantiated by the record. The NAACP had no knowledge of the Savannah Branch's picketing at respondent's market until it was served with the petition making it a defendant in this action. It did not supervise the conduct of the Savannah Branch, nor did it have any employees there; yet the court below affirmed that the branch officers were "agents" of the National Association. A meeting held by the Savannah Branch to plan a selective buying campaign was labeled the formation of a conspiracy, and the subsequent picketing was held to be unlawful even though evidence concerning the branch and its officers showed only that customers were urged not to patronize the store. The decision below, affirming the award of $85,793.05 in damages despite the absence of any supporting evidence, violates the Fourteenth Amendment to the United States Constitution. *Thompson* v. *Louisville,* 362 U. S. 199; *Fields* v. *Fairfield,* 375 U. S. 248; *Garner* v. *Louisiana,* 368 U. S. 157.

While Georgia law generally requires considerably more evidence than is present here to hold non-profit or charitable organizations liable for the acts of their agents (*Randall Bros.* v. *Volpe,* 82 Ga. App. 427 (1950); *Montgomery* v. *Walton,* 111 Ga. 840 (1900); *Lester Book & Stationery Co.* v. *Massee,* 138 Ga. 213 (1912)), the courts below refused to apply their customary standards to pe-

titioner. This conflicts with the guarantee of equal protection afforded by the Fourteenth Amendment. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 682.

Accepted agency principles make clear that the agency relationship inheres only when the principal controls the conduct of the agent with respect to the transactions at issue. *Esmond Mills* v. *C.I.R.,* 132 F.2d 753 (1st Cir. 1943), *cert. denied,* 319 U. S. 770. Considerable control can be found in the power of a corporation over its subsidiary; the parent may elect directors, make by-laws, increase or decrease capital stock Yet these factors do not in themselves create liability on the part of the corporation for the subsidiary's acts. *Cf. Stevens* v. *Roscoe Turner Aeronautical Corp.,* 324 F.2d 157 (7th Cir. 1963); *Fisser* v. *International Bank,* 282 F.2d 231 (2nd Cir. 1960). Since the degree of control exercised by such a commercial corporation is substantially greater than that of the NAACP over the groups of volunteers which act as its branches, there is no rational basis for finding an agency relationship in the latter case.

The NAACP differs in its basic nature and purpose from a business organization. It establishes broad policy goals but does not and could not administer the day-to-day activities of its branches. These branches have been formed by impetus from the locality in which they function so that the members can "make more effective the expression of their own views." *NAACP* v. *Alabama,* 357 U. S. 449, 459. This is the antithesis of the finding of the Georgia Supreme Court that the branches operate "in furtherance of [the National Association's] business and interest."

Where property is taken pursuant to a suit between private parties which has been arbitrarily and capriciously decided in violation of the applicable law and the evidence adduced, the due process guarantees of the Fourteenth Amendment are vitiated. *Williams* v. *Toole,* 108 F.2d 758, 759 (5th Cir. 1940); *State to use of Maines* v. *A./S. Nye Kristianborg,* 84 F. Supp. 775, 780 (D. Md. 1949).

ARGUMENT

I. The Judgment Below Resulted From Erroneous Charges by the Trial Court and Erroneous Rulings by the Trial and Appellate Courts Rather Than Evidence.

An analysis of the transcript before this Court will show that the finding that the NAACP participated in an illegal conspiracy by virtue of the conduct of other defendants to this action, is totally unsupported by the evidence.

Since both the witnesses and the judges rarely differentiated among defendants, designation of the record in order to deal only with testimony and judicial rulings affecting petitioner NAACP has been difficult. However, the four volume record has been sifted carefully and as designated (without objection from respondent as to its content) represents each instance in which the testimony and judicial rulings appear relevant to the liability of petitioner NAACP.

Although pleadings are not evidence, both the trial court and Supreme Court of Georgia placed heavy reliance upon the fact that the amended petition alleged that Mr. Law and the Savannah Branch acted "in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and servic and in furtherance of the business of said corporation" (R. 13).

The broad allegations of the amended petition concerning the agency relationship of the Savannah Branch, Mr. Law, and Rev. Jaudon to petitioner are supported in the record by only seven pages of testimony. The balance, not reprinted here, deals with the alleged activities of unknown persons who gathered at respondent's place of business, and with the conflicting versions of the incident involving respondent and his Negro employee which led to the institution of picketing.

Mr. W. W. Law was the only witness on the agency question. He categorically denied any conspiracy. He testified he was President of the Savannah Branch and of the State Conference of Branches (an original defendant against whom the Georgia Supreme Court found insufficient evidence to warrant a judgment), that the Savannah Branch was a unit of the National Association with which it shared its dues, that its members automatically became members of the National Association, and that orders or counsel from the national corporation to the local branch would be in the form of workshops and discussions held at the national convention. In relation to the decision to picket, Law testified that a circular advertising the Savannah Branch meeting headed "NAACP Mass Meeting Tonight, St. Phillips Monumental AME Church . . . F. D. Jaudon, pastor, at eight o'clock" had been prepared in the Savannah Branch office and had been "a direct action of the local branch of the NAACP" (R. 53). Law explained that the Executive Committee of the Savannah Branch had ratified the decision reached at the Branch meeting to engage in a "selective buying campaign" by means of peaceful picketing. As to ratification of the action by the NAACP, he testified he had not reported to the National Association on the picketing activity of the Savannah Branch until the temporary injunction was served on it through him and that in the "normal course of business" would only have done so "as a part of our annual activities" (R. 54). When asked if the "national branch at that time approve[d] of the action that had been taken by the local branch" he aptly summed up the absence of agency between the local and national organizations by replying "I don't really believe that that entered into the situation at all" (R. 54).

During the trial, counsel on behalf of the NAACP made several unsuccessful motions seeking dismissal for failure of the respondent to present evidence establishing a cause of action as against the corporation. That respondent had

failed to establish agency, is graphically shown by the trial court's comment during argument on the motion to dismiss made at the close of respondent's case:

> . . . would the fact of affiliation alone; that is they have the same general objects and purposes, to wit, the advancement of the Negro race, would the national association then be bound by the acts of the affiliated association, they not being incorporated, and, *so far as the evidence is concerned, there being no evidence to the effect that any member was the agent of the national corporation. In other words they were just affiliated* (R. 60-61) (emphasis supplied).

In ruling on the motion the next day, the court admitted it was a "close point" but found that "the question of agency is so closely tied with the question of conspiracy that in order to be consistent with its rulings [allowing into evidence testimony on activities by non-defendants to bind defendants], the Court will have to overrule the motion for non-suit" (R. 65).

In its charge to the jury, the court evolved its unexplained and unsupported legal theory that conspiracy and agency were intertwined, stating (in the only portion of its lengthy charge dealing specifically with the liability of the corporation):

> Now did the NAACP have an agent in Savannah? Who was that agent? Was it W. W. Law? Was it the Savannah Branch . . . as an *affiliate*? Is the National Association responsible for what this *affiliate* does? . . . Are they so connected that one is responsible for the act of the other by reason of the *agency;* by reason of their concerted activities as expressed in this *conspiracy*? As the Court sees it, you can't get *agency* and *conspiracy* separated in this case. A corporation may be a member of a *conspiracy* if its officers and agents take part in it and it furthers the *conspiracy* . . . Did they [NAACP] participate through their *agents* and members and people who had a right to bind them in this *conspiracy*? (R. 78) (emphasis added).

The emphasized words indicate the complete confusion created in the jury's mind by the use of the terms "affiliate," "agency," "conspiracy" as though they were interchangeable. It was never pointed out that the jury must find agency before it could find petitioner was a member of an alleged conspiracy. Rather, the jury was told its first task was to determine whether there was a conspiracy (R. 86).

Moreover, the only reference to the unique nature of the NAACP as a corporation was made only in passing. There was no attempt to show how the difference between the NAACP and a typical commercial corporation could affect the determination of whether agency existed.

> You have heard the evidence as to the organization. It is not an ordinary business organization in that sense. It is an organization to cover certain activities, as explained on the witness stand, activities for the advancement of colored people as they contend to protect them in their constitutional rights and in their rights as citizens (R. 77-78).

Although the court did advise the jury it could find differently as to the various defendants' liability, it did not charge that it could apportion damages among them, or that punitive damages might be awarded as to one or more of the defendants but not against all. The basis of the $50,000 punitive damages award can be found in the court's charge that the jury was justified in making such an award if it found that the original defendants had maliciously instituted the picketing in order to drive respondent out of business and did not believe that respondent was guilty of mistreating his Negro employee. The judicial theory behind the granting of punitive damages against a principal for the malicious acts of his agents is the feeling that this will result in the principal punishing his agent. Here, however, the NAACP was in no position to punish the unknown perpetrators of the allegedly illegal conduct.

It should be noted that while there was a paucity of evidence presented pertaining to the question of whether Law or the Savannah Branch were agents of the NAACP, to the extent necessary to hold the latter responsible for the malicious acts of the former, there was even less evidence on the basic liability question—*i.e.*, the liability of Law and the Savannah Branch for the activities of those broadly referred to as "pickets." In only two instances were respondent's witnesses able to name those they saw at respondent's market. In one case it was Law who was said to have been present when the witness saw the pickets "calling" customers out of the store and in the other, a man identified only as "Drayton" who was "one of the main head leaders". "Because he was always there. He stayed there day and night" (R. 55-58). There was no further identification of Drayton's association with any of the defendants and his personal action was also shown to have been only urging customers not to patronize plaintiff's store.

In denying the motion for a new trial, based upon twenty-four grounds of prejudicial error alleged to have been committed during trial, the court found improper form in the ground alleging failure to show agency between Law and the Savannah Branch and the NAACP and refused to rule on it (R. 37). As a basis for denying all other grounds, essentially directed at the consideration by the jury of illegal conduct by persons not shown to be connected with the NAACP or under its control, the court relied upon the wide latitude permitted in admitting evidence in cases involving the existence of a conspiracy (R. 34-36). The testimony objected to, however, pertained not to the conspiracy, but to overt acts allegedly committed as a result of the conspiracy. Although the objections were based on lack of agency, the court applied the test of admissibility applicable to conspiracy.

On appeal, the Supreme Court of Georgia cited as supporting evidence for the verdict, the title of the circular, the failure of the NAACP to protest jurisdiction when service was effectuated on it through Law, the use by the Savannah branch of the name NAACP, the "control" exercised by the National Association through its national convention and the "holding out" of the Savannah Branch as a representative of the NAACP.

The court was also influenced by the failure of the national corporation to disaffirm the acts of the branch, holding that it had a duty to do so and having failed to exercise this duty was assumed to have ratified its acts.

The basic error made by the courts below which culminated in the decision to allow liability to fasten on the national corporation was the consistent refusal to recognize that agency and conspiracy are not the same and that in this case it was essential that agency be established before conspiracy could be found. Unless Law or the branch was shown to have had the attributes of an agent of the NAACP, it is not possible to impute their acts to the corporation since it could only have been present through Law or the Savannah Branch. It thus becomes necessary carefully to examine the evidence relied upon by the state courts as indicative of an agency relationship.

1) The heading of the circular as an "NAACP mass meeting" indicates only that the accepted nickname for the Savannah Branch was "NAACP." This also seems clear from repeated use of the term "NAACP" by Law, the court, other witnesses and respondent's own counsel when reference clearly was to the branch. The full title of the branch is somewhat cumbersome for a catchy headline to a circular or for conversation. Such abbreviated names used with reference to local branches and affiliates

of national organizations abound.[1] They do not establish the relationship between the entities referred to in a sense sufficient to fix legal liability unless it can be established that a third person relied upon such similarity in name to his detriment. Since respondent's own verified petition alleges the meeting was called by the NAACP *and* the Savannah Branch, although there was no mention of the *branch* in the circular, it is obvious that the circular did not mislead respondent as to the sponsorship of the meeting. Indeed, the issuance of the circular was termed by counsel for respondent, as a "direct action of the local unit", thus indicating that the wording of the circular (which together with the use of a common name appears to be the only evidence available to support the state supreme court's conclusion that the Savannah Branch "held itself out" to be the representative of the national corporation) is inadequate to support such a sweeping finding. Aside from the fact that respondent's own petition indicates an absence of reliance on this alleged "holding out", his injuries here were in no way affected by the relationship of petitioner to the picketing. Respondent's damage was said to result from an atmosphere of lawlessness created by the presence of the pickets. It was thus far removed from the NAACP.

2. The failure of the national corporation to contest jurisdiction of the court and rather to defend the suit on its merits was deemed by the appellate court to support the jury's finding that Law was petitioner's agent. Validity of service of process upon a corporation is not germane

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[1] For example, when a television network identifies itself as "CBS" or "NBC" it does not add that it is the New York unit of that network; when one says he is a "Mason" he does not hasten to add what local lodge; identification as a "Democrat" or "Republican" does not necessarily involve the full name of the local political club. Circulars addressed to members of such local affiliates do not necessarily describe which branch is holding a stated event—the address alone is enough to advise the recipients of the circular that it is a locally sponsored affair.

to the question of establishing agency for the purpose of corporate liability. In any event, the NAACP did deny jurisdiction over it in its answer to the original petition and by its general demurrer to the petition. Throughout the trial, it never abandoned its contention that respondent had failed to establish agency.

3. The issue of ratification is irrelevant unless we assume that the local was petitioner's agent for the purpose of being held liable for its illegal acts. However, since the NAACP steadfastly denied that Law or the branch was its agent for any purpose, a need to disaffirm is not germane. Moreover, ratification or disapproval cannot be relevant until knowledge is established. The first notice the corporation had of the entire incident came with service of the petition and temporary restraining order on Law. All it had was the word of respondent as alleged in the petition, that an NAACP branch and local officers had taken certain action. The branch, however, argued that these allegations were untrue, that it had been peacefully picketing in a lawful exercise of its constitutional rights and was in no way involved with alleged illegal acts committed by unidentified persons. Thus, in order to take any position at all on the activities of the branch, it would have been necessary for the NAACP to accept without question the word of respondent—clearly not an impartial party. Thus, so far as petitioner was concerned, the local branch had committed no illegal acts and there was nothing in the situation requiring it to express disapproval.

Finally, ratification of illegal acts is appropriate only when the acts were committed in furtherance of the principal's business. It is strained argument to say that the NAACP stood to gain by Law's allegedly illegal acts. There is no analogy to situations where, for example, a collection agency may be said to gain from its employee's

overly zealous and perhaps felonious methods in pursuing delinquent accounts.

4. Evidence of connection between the Savannah Branch and NAACP was limited to the finding that the local affiliate has as part of its name the national association's initials, shares common broad goals with the national organization which are articulated at annual conventions, and that it shares a portion of its dues with that organization. The Georgia courts found this inconclusive evidence sufficient to support the trial court finding that "the locals are within the framework of the national organization and are used in furtherance of the latter's business and interest." (R.107). The Georgia Supreme Court cited the applicable statutory requirements to establish agency as follows:

> The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf. (R.107).

However, there was no evidence here at all concerning the national's activities. Law testified as an officer of the local association and indicated in answer to all questions that the picketing had been purely *local* activity in which the national corporation was not, and under their relationship would not, be involved in any way—even insofar as knowing about it. There was no evidence adduced to contradict this view.

No questions were asked and there is no evidence on the record to show whether the national corporation had any control over the activities of its branches, whether Law was a paid employee of the national (or even of the local), what financial arrangements were between the national office and the local branches (who paid the rent, who signed the checks, etc.).

The statutory and case law cited by respondent and the courts below pertains to agents in the commercial

sense—that is, employees who are paid by the national corporation, whose activities are controlled by the national corporation and whose work is directly attributable to the economic interests of the corporation. None of these factors are, as a matter of fact, present here, and none of them were elicited by respondent for the record despite its duty to meet the burden of proof on these issues.

Thus the decision below, like those in *Thompson* v. *Louisville,* 362 U. S. 199, *Fields* v. *Fairfield,* 375 U. S. 248, and *Garner* v. *Louisiana,* 368 U. S. 157, is not sustained by the record and must be reversed as in violation of the Fourteenth Amendment.

II. The Judgment at Issue Contravenes State Law Regarding Corporations in Violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

A. Although the courts below did not consider whether agency concepts are the same where a charitable as distinguished from a commercial corporation is involved, Georgia courts have elsewhere consistently shown a different attitude toward non-profit units. Indeed, a compilation of Georgia cases in this area reveals that in almost all instances the charitable corporation has not been held liable for the unauthorized acts of persons who, in a commercial corporate context, would surely have been designated as agents. See, *e.g., Randall Bros.* v. *Volpe,* 82 Ga. App. 427 (1950) (no agency found between church and church member in charge of building work who held himself out to be an agent and advised plaintiff that church would pay for necessary building materials); *Montgomery* v. *Walton,* 111 Ga. 840 (1900) (church trustees not liable for pastor's purchase of wood); *Lester Book & Stationery Co.* v. *Massee,* 138 Ga. 213 (1912) (political campaign committee not responsible for cost of political lists prepared at behest

of staff member after campaign concluded although lists were for purpose of providing funds to pay committee debts).

Indeed, the only cases found in which non-profit institutions were held liable for the unauthorized or illegal acts of their agents involved situations where the institution was found to have elected to benefit as a result of the unauthorized acts. *E.g., Haney School-Furniture Co.* v. *Hightower Baptist Institution,* 113 Ga. 289 (1901) (use of equipment purchased by school president without authority deemed ratification).

Explicit evidence of Georgia's policy toward charitable corporations is found in a statutory provision holding voluntary agents (frequently found representing charitable groups) to a lower standard of care than paid agents (Ga. Code 4-203) and in the requirement evolved through case law that the assets held in trust by a charitable institution may not be used to satisfy judgments based upon the negligence of its agents unless it is shown that there was negligence in hiring or retaining the agent (see *e.g. Morton* v. *Savannah Hospital,* 148 Ga. 438 (1924). Although neither of these legal principles are directly involved here, they do reveal a philosophy distinctly absent from the holdings of the courts below.

It is clear that members and officers of local NAACP branches dedicated to the elimination of racial discrimination are not working for compensation, but rather because they believe in the goals of their organization. The failure of the Georgia courts to apply their customary standards to the facts of this case, is a violation of equal protection of the laws. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 682; *Cf. NAACP* v. *Alabama,* 357 U. S. 449; *Staub* v. *City of Baxley,* 355 U. S. 313; *Wright* v. *Georgia,* 373 U. S. 284; *Williams* v. *Georgia,* 349 U. S. 375; *Bouie* v. *City of Columbia,* 378 U. S. 347.

B. In addition to failing to take into consideration the difference between non-profit and commercial corporations

in agency situations, the trial court and subsequently the Georgia Supreme Court violated state law when they permitted all proffered testimony of disorderly or illegal conduct to be placed before the jury without instructions to the jury that before it was authorized to consider such testimony, it must determine whether there had been sufficient independent evidence justifying a finding that the perpetrators of these acts has been agents of any of the defendants. See *e.g., Campbell* v. *Walker,* 20 Ga. App. 88 (1917); *Arnold* v. *Adams,* 4 Ga. App. 56 (1908); *Booker* v. *Lowe,* 122 Ga. 356 (1906).

Georgia rules of evidence were further distorted by the trial court's refusal to recognize that conspiracy and agency are not the same. Both the trial and appellate courts have affirmatively stated that where conspiracy is involved in a case great latitude in establishing it is permitted, and in effect held that where proof of conspiracy requires a showing of agency similar treatment must be allowed.[2] There is no support in the law for this interpretation. It is impossible for a corporation to conspire through a person not authorized to represent it. *Liberty Mutual Insurance Company* v. *Lipscomb,* 56 Ga. App. 15 (1937).

Moreover, where the conduct involved is malicious or willful, Georgia law specifies that liability attaches to the principal only where the malicious act was performed by the agent within the scope of the corporation's business, *Plumer* v. *So. Bell Tel. & Tel. Co.,* 58 Ga. App. 622 (1938), expressly authorized, in violation of a duty that the principal owed to the plaintiff, or ratified by the principal. *Southern Railroad Co.* v. *Chambers,* 126 Ga. 404 (1906);

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[2] *Woodruff* v. *Hughes,* 2 Ga. App. 361 (1907), which was relied upon heavily as establishing the right of a party asserting conspiracy to have wide latitude in proving it, did not involve a question of conspiracy between a principal and an agent.

Heath v. *Atlanta Beer Distribution Company*, 56 Ga. App. 494 (1937).[8]

In the instant case, even if we assume *arguendo* that Law or the Savannah Branch were general agents of the NAACP, this general agency would not authorize them to act illegally. While the NAACP may as a general policy permit *peaceful* picketing as a means of advising the public of racial discrimination, there is certainly nothing in the evidence or in the generally recognized pattern of conduct of the NAACP which could justify the conclusion that the NAACP acquiesces in violence. While it it true that the Georgia Supreme Court was initially concerned with the inadequacy of proof as to the liability of petitioner, its doubts were apparently resolved by the material on this question supplied by respondent's counsel pursuant to the court's request (see Appendix). However, none of the arguments made or authorities cited by respondent on the question of NAACP liability substitute for the lack of competent evidence on this point.

Nor was agency in the instant case to be inferred from petitioner NAACP's failure to disavow the acts of the branch, which the court below found to be ratification. The court paid lip service to the requirement that an agent's unauthorized acts must be ratified by its principal before liability for these acts may attach to the principal. However, the jury was given the term "ratification" without frame of reference or definition. It was not told that knowledge sufficient to make alleged ratification meaningful

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[8] In almost all of the cases involving the liability of a principal corporation for the tortious conduct of its agents, the courts were concerned only with whether the pleadings contained the necessary allegations as set forth above, and not with whether the evidence presented supported these allegations. See, *e.g.*, *Davison-Paxon Co.* v. *Norton*, 69 Ga. App. 77 (1943). *Progressive Life Insurance Company* v. *Doster*, 98 Ga. App. 641 (1958). *Southern Grocery Stores* v. *Herring*, 63 Ga. App. 267 (1940).

". . . [m]ust have been acquired by the principal otherwise than by the knowledge of the agent, the ratification of whose act is contended for." *Hale-Georgia Minerals Corp.* v. *Hale,* 83 Ga. App. 561, 562 (1951), or that:

> It is elementary that before a principal can be bound by a ratification of the act of an agent he must at the time of ratification have full knowledge of all the material facts by which he is to be bound. *Weathers Bros. Transfer Co.* v. *Jarrell,* 72 Ga. App. 317 (1945).

Patently, it was impossible for petitioner to have "full knowledge" of facts which were and are still in dispute.

In addition, Georgia law makes it impossible for an act to be subject to ratification unless it had been done for and in behalf of the person adopting it. *Smith* v. *Pope,* 100 Ga. App. 369 (1959); *Fed. Deposit Insurance Corp.* v. *Thompson,* 54 Ga. App. 611 (1936).

In summary, in dealing with the facts in this case the courts below showed no recognition that even in the typical commercial situation, the quality and quantity of evidence required to establish an agency relationship in which liability can be attached to the principal, varies in accordance with the character of the agent's act with which the principal is sought to be charged. Rather, the state courts here held in effect that the existence of an agency relationship is static and absolute and that once that relationship is found the principal is automatically responsible for any injuries its agent may cause another. This is not Georgia law.

A further ramification in this departure from Georgia law can be seen in the finding that the NAACP was responsible for the acts of persons completely unidentified and unknown to it. This is not even a case where the alleged agent is charged with committing an illegal act. Rather, it is an instance where the alleged agent of an absent principal

is charged with encouraging others to feel licensed to commit tortious acts. The failure of the Savannah branch to disaffirm the acts of others is imputed to the national corporation. The theory behind holding a principal liable for the torts of its agents cannot be thus overextended.

III. The Decision Below Deprived Petitioner of Property in Violation of the Due Process Clause of the Fourteenth Amendment.

The $85,000 judgment against the NAACP in this case represents a complete departure from sound agency principles. In essence, the agency relationship involves the right of the principal to control the conduct of his agent with reference to matters entrusted to the agent. *Esmond Mills* v. *C.I.R.*, 132 F. 2d 753 (1st Cir., 1943), *cert. denied*, 319 U. S. 770. The court below based its finding of petitioner's liability solely on its "affiliation" with its local branch. No attempt was made to go beyond the fact of affiliation to the question of control.

That the NAACP is a corporation is not relevant to the question of control. As was said by Mr. Justice Douglas and Carrol M. Shanks in "Insulation From Liability Through Subsidiary Corporations," 39 Yale L. J. 193, 194:

> Little will be gained by seeking to ascertain what a corporation is. It is not a thing. It is a method. It defies definition when removed from the background of the purpose attempted to be accomplished and the manner of accomplishing it.

A corporation organized and operated for profit is entirely different from one purposed to advance the ends of justice. This difference in the *raison d'etre* in turn leads to differences in structure and thus in the degree of control which can be exercised over affiliates. At one end of the spectrum is the power of a corporation over a wholly-owned subsidiary. At the other end is the relationship of the NAACP

and the local groups of volunteers which function as NAACP branches. Although the commercial corporation has sufficient control through the ownership of the subsidiary's stock to elect directors, enact by-laws, increase or decrease capital stock, and some or all of the officers or directors of the two corporations may be the same, these factors alone do not necessarily render the parent liable for the torts of the subsidiary. Only if the parent treats the subsidiary as its own property as far as management and operation are concerned, or if it interferes and directly controls the transactions involved, is it held to acquire the burdens as well as the benefits of the relationship. See *e.g., Stevens* v. *Roscoe Turner Aeronautical Corp.*, 324 F.2d 157 (7th Cir. 1963); *Fisser* v. *International Bank*, 282 F.2d 231 (2nd Cir. 1960); *Segall* v. *Food Fair Stores, Inc.*, 185 F. Supp. 81 (E. D. Pa. 1960); *Friedman* v. *Vandalia Railroad*, 254 Fed. 292 (8th Cir. 1916).

The parent corporation is insulated from liability if the following factors are adhered to in the structure of the two corporations: (1) Each is a separate, self-sustaining financial unit; (2) each has separate day-to-day activities; (3) each maintains separate financial records.[4] All of these factors are, of course, applicable to the relationship between the NAACP and any of its numerous branches. If the rule involving business corporations which own other corporations is predicated upon freedom from liability, even greater protection from liability should inhere in the case of the NAACP and the groups to which it permits the use of its name.

A closer analogy to the instant case is the law as it has been applied to the liability of international unions for the tortious acts of their locals. The *ratio decidendi* of *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344, is instructive here. In that case both a local and an

[4] Douglas & Shanks, "Insulation From Liability Through Subsidiary Corporations," *supra*, at p. 196.

international union were held liable by the trial court for injury resulting from an unauthorized strike by the local. This Court reversed as to the international union holding at page 395:

> The argument of counsel for the plaintiffs is that, because the national body had authority to discipline district organizations, to make local strikes its own and to pay their cost, if it deemed it wise, the duty was thrust on it, when it knew a local strike was on, to superintend it and prevent its becoming lawless at its peril. We do not conceive that such responsibility is imposed on the national body.

Coronado is amplified by *Spica* v. *International Ladies Garment Workers Union*, 388 Pa. 382, 103 A. 2d 468, 479 (1957), which involved the question of whether the international was subject to service. The court stated:

> You may bring the various organizational levels into this Court, but before we shall convict any of the entities of tort, you must convince us of its own tortious conduct.

Just as the court in *United States* v. *International Union of United Mine Workers*, 89 F. Supp. 179, 181 (D. C. 1950) refused to "convict [the international union] on conjecture" for having in some way induced a mass strike of union members, so this Court should not sustain a judgment based upon the assumption that the illegality was occasioned by the NAACP.

In *Di Giorgio Fruit Corporation* v. *NLRB*, 191 F. 2d 642 (D. C. Cir 1950), *cert. denied*, 342 U. S. 869, the issue was whether a certain local of the National Farm Labor Union was subject to the jurisdiction of the National Labor Relations Act. Since the court found that the local consisted of agricultural workers who were expressly excluded from coverage the only question was whether the local was an agent of the national, which was subject to the Act. Despite

the requirement of dues splitting and use of a common name, the court at page 648 found:

> If on the evidence here present it were to be held that this local was the agent of the National it would be difficult to imagine a local member of the National which would not be such an agent.

It concluded that so to find would entail placing the local under the jurisdiction of the National Labor Relations Act, a result clearly not intended by the framers of that legislation. If in *Di Giorgio;* where the evidence showed that the national union had sent representatives for the purpose of aiding the local in conducting an organizational strike, the court could find no agency relationship between the two groups, certainly no such finding is warranted here.

As has been shown, the opinion below equates the NAACP with a commercial corporation whose affiliates are used "in furtherance of . . . [its] business and interest" (R. 107). The implication is that corporate business has been transacted for the benefit of the NAACP. This kind of analysis cannot be tailored to fit the situation shown in the record. When the Savannah Branch responded to local concern about respondent's treatment of a 14-year old employee, it was not acting for the benefit of the New York corporation. It acted in the interest of its members and the Negro community. Organizational activity of this kind ". . . is but the medium through which . . . individual members seek to make more effective the expression of their own views." *NAACP* v. *Alabama,* 357 U. S. 449, 459.

When the corporate process of establishing sub-divisions is compared with the formation of an NAACP branch, the function of the branch is illuminated and the important distinctions between these processes highlighted. A business corporation opens an office in a new geographical area by renting office space, hiring employees and setting up the operational details which will govern the transactions in which its employees are expected to engage. Conversely,

the impetus for setting up a NAACP branch comes from the locality in which it will function. Local citizens agree that they will band together to effectuate their mutual purposes and that they will ask the NAACP for permission to use the name as part of the name of their own. If the members agree with the principle of eliminating racial discrimination through peaceful and lawful means, they are accorded a charter by the NAACP. Thus they become, as this Court recognized in *NAACP* v. *Alabama*, 357 U. S. 449, 452, "chartered affiliates which are independent associations. . . ."

Any Procrustean attempt to expand the liability of the NAACP beyond the acts of its own employees and the programs which they direct must fail. There are more than 1500 NAACP branches, each of which have local programs and activities. The function of these branches is not to do business for the New York corporation but to associate for legitimate ends, which this Court has held "makes possible the distinctive contribution of a minority group to the ideas and beliefs of our society." *NAACP* v. *Button*, 371 U. S. 415, 427.

The ramifications of a decision affirming the liability of petitioner are far-reaching. The relationship between the NAACP and its branches is similar to that of a political party to local clubs. The purpose of both is to advance a social program. Both raise funds at the local level which may be used partially for national objectives. Both have a common name. In both, organizational control over affiliates is general, limited to establishment of broad policy goals rather than supervision and administration of day-to-day activities. Thus, the enunciation of a principle whereby such organizations are automatically liable for the acts of affiliates, would be destructive of the effective functioning of political parties, fraternal societies, patriotic national organizations, and similar entities.

A national political group could function within the confines of such a rule only by dispatching a supervisor to each local unit in order to oversee daily affairs. This would impose an impossible financial and structural burden upon such groups. As a practical matter, the necessity for assuming this kind of policing would drain all the personnel and funds of the national organization. It would vitiate any possibility of continuing its true function of formulating and expressing the broad policies and platforms which the local groups carry out in the context of their local problems.

An additional effect in the case of an organization such as the NAACP would be to distort the nature and therefore the purpose of the Association. The nature of the corporate petitioner is delineated in detail in *NAACP* v. *Alabama*, 357 U. S. 449. The principal objectives of the organization, a New York non-profit membership corporation, include as set forth in its certificate of incorporation:

> voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.

The historical fact of servitude, the repressive measures which followed emancipation and the ensuing and existing stigma of inferiority borne by Negroes provide both motivation and necessity for a unified effort to achieve, in fact, those civil rights long guaranteed in theory. It was not possible for the individual Negro or diverse groups of Negroes to effect any discernible change in a long enduring pattern of racial discrimination. Such changes are only possible through a national group. Thus it was that in 1911 the National Association for the Advancement of Colored People was formed.

The paramount purpose of the organization, the acquisition of equal rights for Negroes, cannot be achieved by a central office. The obstacles and impediments to racial equality in New England are dissimilar to those in the South; eradication of these obstacles and impediments requires effort at the local level by those immediately concerned. For this reason, the New York corporation can neither function nor carry out the purposes for which the organization was created without its branches. Therefore, without regard to *legal* liability, the destruction or impairment of its branches effects a mortal blow to the parent organization whose existence is posited on the eradication of racial prejudice in all areas of this country and the securing of equal rights for Negroes as *individuals*. Survival or insulation of the national corporation *sans* local units defeats the purpose of the organization. The branches represent those individuals, united by a common purpose, whose equal rights are sought to be protected and furthered. Branches are financially incapable of satisfaction of substantial money judgments from their own funds; consequently their continued existence requires payment of such judgments by the corporate petitioner. Accordingly, a *legal* lack of the corporate petitioner's responsibility, although consistent with the law, does not relieve the NAACP of restoring its branches to a position where they can function. It is elementary that a sizeable money judgment would attach to any and all funds which might be raised or acquired by the branch to further local programs. Existence of this "sword of Damocles" is more than sufficient to destroy the branch and to curtail any meaningful efforts to fight discrimination in that locality.

In this case, state action effectuated through judicial fiat purposed to remove local "civil rights agitators," is sought to be accomplished by striking at the local units. In the past, attacks upon the branch or the corporation have been purposed to suppress local activities. This

thesis is not novel to this Court. In *NAACP* v. *Alabama*, 357 U. S. 449; 377 U. S. 288, the expulsion of the corporate petitioner was a device to eliminate efforts to desegregate facilities in Alabama. Similarly, in *NAACP* v. *Button*, 371 U. S. 415, application by the State of Virginia of a barratry statute to the corporate petitioner would have successfully terminated *local* civil rights litigation in that state. Again in *Gibson* v. *Florida Legislative Investigation Committee*, 372 U. S. 539, it was the records of a branch which were sought by the state. Parenthetically, it should be noted that in all these instances the national organization came to the legal defense of the branch, an act which this Court considered neither an admission of the charges made nor creation of or participation in a conspiracy. In addition to preserving the right of freedom of association as a derivative of freedom of speech, a principle which pervades all of these cases, these decisions are of broader application. *Alabama*, *Button* and *Gibson* condemn any perversion of the law by a state which in purpose or effect stifles legitimate group activity purposed to foster and secure racial equality or to facilitate political (as opposed to partisan) expression. These decisions implicitly recognize that apparently minor and unrelated restrictions attempted through a variety of methods would, if successful, produce the same result: the paralysis and eventual impotence of the Association. Here, as in *NAACP* v. *Alabama*, 377 U. S. 288, 309, "This case, in truth, involves not the privilege of a corporation to do business in a State, but rather the freedom of individuals to associate for the collective advocacy of ideas."

All rules of well-settled law demand vacation of the verdict against the corporate petitioner but such reversal results in a pyrrhic victory. The erroneous judgment against the Savannah Branch effectively accomplishes the same result as the retention of the entire decision of the court below, since continued operation of local branches is essential to the unique character of the New York corporation.

The *sine qua non* of the decision here appealed rests on an erroneous statement of the law of conspiracy and agency (R. 34-36, 65, 78). The application of unconstitutional legislation (*NAACP* v. *Button, supra; Gibson* v. *Florida Legislative Investigation Committee, supra*); and the imposition of unlawful contempt orders (*NAACP* v. *Alabama*, 357 U. S. 449) cannot be legally distinguished from erroneous and unfounded statements of "controlling" law for the guidance of a jury. A jury verdict is not sacrosanct; it must be consonant with the law as stated by the court and where that statement of the law is erroneous, the verdict must fall. See *Henry* v. *Collins*, 380 U. S. 298, where the state court judgment was reversed because erroneous instructions to a jury resulted in a charge in conflict with constitutional principles. Civil judgments based upon such errors in law represent a basic denial of fundamental due process. As this Court noted in *Stein* v. *New York*, 346 U. S. 156 at page 181:

> Of course, this Court cannot allow itself to be completely bound by state court determination of any issue essential to decision of a claim of federal right, else federal law could be frustrated by distorted fact finding.

Petitioner does not suggest that the ambit of the First Amendment insulates any and all activity merely because it is pursued under a standard of freedom of association, or that an honest belief that the boundaries of the First Amendment encompass its acts, automatically affords protection. Rather, it is the state's erroneous application of the law upon which liability was premised, which offends petitioner's due process rights. In *Williams* v. *Toole*, 108 F.2d 758 (5th Cir. 1940), at page 759, the appropriate principle is succinctly stated:

> However, if a case between private parties is arbitrarily and capriciously decided, in violation of settled principles of law and contrary to undisputed

> facts, though the court so deciding had jurisdiction over the suit, the judgment may be in violation of the 14th Amendment.

Similarly, in *State to use of Maines* v. *A/S Nye Kristianborg*, 84 F. Supp. 775 (D. Md. 1949), where the state had imposed liability on a vessel, irrespective of fault, the Court stated at page 780:

> It requires no elaboration to demonstrate that a statute which, as we have seen, would impair a property right, by subjecting one's property to the claims of another without personal fault or legal liability of the owner, destroys vested rights of property and is therefore clearly invalid. It is the taking of property without due process of law contrary to the Fourteenth Amendment of the Federal Constitution . . .

What a state may not constitutionally accomplish by means of a statute, it is likewise precluded from doing by misstatement of the law. *New York Times* v. *Sullivan*, 376 U. S. 254, 276. In *Sullivan* this Court recognized the inhibiting effects of unconstitutionally secured civil damage judgments. The threat and use of civil process and onerous damage verdicts is restrictive and deterrent to the exercise of associational activities and produces the "chilling effect" on these rights which this Court averted in *Dombrowski* v. *Pfister*, 380 U. S. 479.

The subsistence and effectuation of its principal purposes and objectives require the corporate petitioner, because of its structure and nature, to acknowledge and satisfy its moral obligation to relieve those individuals who constitute its branch of the onerous judgment cast upon it by the court below. While the petitioner is confident that it cannot be held liable on the facts in this record without grave infringement of basic constitutional standards, it is respectfully submitted that the judgment below has been equally violative of due process and equal protection as

to the Savannah Branch, W. W. Law and Rev. Jaudon. Survival of that unconstitutionally acquired judgment undercuts this Court's past interpretations of the Fourteenth Amendment's guarantees.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this Court should review the entire case on the merits and reverse the judgment below, not only as to petitioner, but as to the Savannah Branch, W. W. Law and Rev. F. D. Jaudon.

Respectfully submitted,

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APPENDIX

(Letterhead of)

STATE OF GEORGIA

SUPREME COURT

ATLANTA

February 11, 1965

To counsel in Case No. 22814,
National Association for the Advancement
of Colored People et al. v. Haldred Overstreet

Dear Sirs:

Today we are directed to write you as follows: It appearing that defendant in error has not submitted argument either orally or by brief on the question of responsibility or liability of the defendants, the NAACP, a New York corporation, and the Georgia State Conference of Branches, NAACP, an affiliate of the NAACP, a New York corporation, for the alleged acts of W. W. Law and F. W. Jaudon, as officers of the Savannah Branch of the NAACP and for the acts of other members of the Savannah Branch, nor upon the question of damages, actual or punitive, counsel for defendant in error are requested to aid the court in the determination of these issues by submitting argument and authorities in support of their contentions on these questions, in supplemental brief to be filed in this office on or before February 18, 1965. Counsel for plaintiff in error are allowed to file reply brief on or before February 22, 1965.

Yours very truly,

HENRY H. COBB,
Clerk.

HHC/fc
Copy to each counsel of record.

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IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A CORPORATION,

Petitioner

vs.

HALDRED OVERSTREET

On Writ of Certiorari to the Supreme Court of Georgia

BRIEF FOR RESPONDENT

HUGH P. FUTRELL, JR.
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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A CORPORATION,

Petitioner.

V.

HALDRED OVERSTREET

On Writ of Certiorari to the Supreme Court of Georgia

BRIEF FOR RESPONDENT

Opinion Below

The opinion of the Supreme Court of Georgia (R. 94-117), affirming and modifying the judgment of the trial court is reported at 221 Ga. 16, 142 S.E. 2d 816 (1965). The order of the Georgia Supreme Court denying defendants' motion for a rehearing (R-120) is not reported.

Jurisdiction

The judgment of the Supreme Court of Georgia was entered on April 20, 1965, (R-117). A motion for rehearing was denied on May 7, 1965, (R-120). An extension of time until August 30, 1965, to file a petition for writ of certiorari was granted by Mr. Justice Black on July 30, 1965 (R-120-121). Petition for writ of certiorari was filed on August 30, 1965, and certiorari was granted on December 6, 1965, limited to the single question hereinafter set out (R-121).

Question Presented

Has petitioner National Association for the Advancement of Colored People, a New York corporation, been deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control?

STATEMENT

A. Prior Proceedings

Respondent agrees with petitioners' statement of prior proceedings.

B. Evidence Presented

W. W. Law is a resident of Savannah, Chatham County, Georgia, and president of the Savannah Branch of the N.A.A.C.P. and the Georgia State Conference of Branches N.A.A.C.P. both of which are unincorporated bodies under charters granted by petitioner N.A.A.C.P., a New York Corporation. Reverend F. D. Jaudon is First Vice-President of the Savannah Branch, N.A.A.C.P. (R-50-51). The function of the N.A.A.C.P is to give aid and assistance to people in the minority, meaning the Negro group in seeking their rights and protection under the constitution. The N.A.A.C.P. acts and operates in Georgia through the Savannah Chapter and other Chapters; gives orders and counsel to its local representatives at annual conventions; the local branch is affiliated with the N.A.A.C.P. and under its corporate chapter is a unit thereof (R-50-51); one paying dues to the Savannnah Branch also becomes a member of the N.A.A.C.P.; members of the Savannah Branch are members of the N.A.A.C.P.; a portion of the dues paid by members of the Savannah Branch goes to the N.A.A.C.P.; and the Savannah Branch is within the framework of the N.A.A.C.P. and is used in the furtherance of its business and interest (R-66-67). The respondent was the owner and operator of an open air market located in a racially mixed residential area in Savannah.

On May 30, 1962, Robert Lee Bolton, a Negro boy of fourteen and respondent's only Negro employee among seven employees, reported to the principal at his school and to his mother and aunt that he had just been physically assaulted by respondent who had accused him of stealing merchandise from the market and had slapped him beside the head and kicked him in the side. The boy further reported that respondent was intoxicated at the time of this incident.

A complaint of assault against respondent was immediately lodged with the Savannah Police by the aunt of the Bolton boy. When the boy and a Negro police officer went to respondent's premises they found him asleep in a chair and the officer stated that he appeared to have been drinking but was not drunk. Several of respondent's employees stated that respondent was not drinking and respondent testifying in his own behalf stated that he had not been drinking. The physician who examined the Bolton boy said that he found a bruised area on the side of his temple and that he complained of a soreness in the back and a stomach ache, and that because of difficulty in trying to control the boy with sedation, he kept him under observation in the hospital for forty-eight hours. The Bolton boy admitted that he had gone by a basketball court and played basketball with other boys before going to work that day. The principal of the Bolton boy's school testified that he had seen similar injuries as a result of boys participating in a basketbal game.

Bolton's mother testified that after she had taken her son to the hospital and returned home, she received several threatening telephone calls, that she reported these calls to the police and then contacted petitioners' Savannah Branch, NAACP. Respondent had already been arrested and taken to jail hours prior to such alleged telephone calls.

Petitioner Law testified that as a result of the mother of Bolton calling upon the NAACP to assist her in defending or protecting her child he called a meeting of the NAACP for the next night at which time it was determined to organize a campaign to withhold patronage from respondent because of his assault on the young Negro boy. He also testified that such meeting was held pursuant to a circular distributed during the day time prior to the meeting which read as follows: "NAACP mass meeting tonight, Saint Phillips Monumental AME Church on Park Avenue and Jefferson Street, Reverend F. D. Jaudon, pastor, at 8 o'clock, protesting the beating of a fourteen year old Negro boy by the owner of Tropical Market, 1601 Montgomery Street, corner of 32nd Street. Come get the truth about the brutality that sent this boy to the hospital where he remains a patient. Come tonight 8:00

P.M." He further testified that the wording of said circular had his approval (R-52-53). He further testified he nor any members of the board of directors or any member or official of the local NAACP ever discussed anything about the incident with respondent at anytime. He also testified that the church was filled with people attending the meeting but could only identify four by name. He further testified that in order to effectuate the picketing plan it was decided to place pickets on each corner of the streets surrounding respondent's market for the purpose of advising all potential customers that the pickets were not buying there because respondent had mistreated a Negro employee, and to request them also to withhold their patronage. On the following day pickets were stationed in accordance with the plan and the picketing continued until June 22, 1962, when a temporary injunction prohibiting their presence was entered.

There was testimony that the police received numerous calls to the area of respondent's market due to a large number of people participating in the picketing, to such an extent that it blocked street and sidewalk traffic.

Petitioner Law was at the scene of picketing many times sometimes for short periods of time and at others for a long period of time (R-55).

There was a great deal of testimony as to the acts of violence that occurred in and about the Tropical Market after the picketing commenced by petitioners on June 1, 1962. Respondent proved that prior to May 30, 1962, there had been no disturbances, acts of violence or any trouble in or about the Tropical Market and that after the pickets were placed on the outside, two colored men entered the store and asked for Mr. Overstreet, your respondent, stating that they had come to get him and that during this time crowds of colored people surrounded respondent's market. It was further proved that a witness, who lived in the vicinity of the Tropical Market, prior to the picketing was able to walk to work by herself but after the pickets were set up it was necessary for her husband or some other man to walk her to work. The reason she gave for this action was the crowds of Negroes

on the corners adjacent to the Tropical Market would say to her as she went by "well, today is a fine day to get her" or "Let's get her" or "why don't we get her today." On several occasions it was necessary for her to walk down the middle of the street immediately in front of respondent's market in order for her to get to the store. The pickets would yell or scream at potential customers entering the respondent's market that they, the customers were not being fair to their color and that they should trade across the street at another market because respondent had beaten the colored boy.

Another witness testified that the pickets had cursed her and also stated that they were going to molest her but she did not use these words during the trial but indicated that profanity was used to suggest what they were going to do. Customers that came into the Tropical Market and made purchases would soon return after being accosted by the pickets on the outside and request their money back without reason, cause or justification and return the merchandise. A witness identified one, Johnny Drayton, as being one of the picketers and also one of the ones that had made threats to her.

Another witness for respondent, stated that on several occasions she had heard threats made to potential customers of respondent's market and that she herself had been threatened by the pickets on one occasion when she entered the market to do her shopping. She further stated that after the picketing had started and while she was on her back porch which adjoined respondent's market she heard a pistol shot from the direction of the area where the pickets were stationed. Bricks and sticks were thrown at respondent's market and upon the roof of the building.

Another witness testified that the person that had made the threat of assaulting her and another lady and cursing them was among the picketers and she had seen him among the picketers on several occasions. She stated further that during the time of the picketing she received several calls while on duty at respondent's market to the effect that there was a bomb planted within the market.

Further evidence was adduced that the picketing was conducted by members of the local Branch of the NAACP, who were likewise members of the National NAACP, a New York Corporation (R. 54-55; 66-67).

One of the original defendants, W. W. Law testified that when a person joins a local branch and pays his dues a portion of said dues goes to petitioner and automatically makes him a member of petitioner corporation (R. 67). He further testified that the Local Chapter was a unit of petitioner corporation and that the Local Chapters were taught, counseled and briefed by petitioner corporation (R. 50-51).

W. W. Law, President of the Savannah Branch, NAACP, and President of the Georgia State Conference of NAACP, testified that he knew of no disavowment on the part of petitioner as to the actions complained of (R. 53-54).

SUMMARY OF AGREEMENT

An analysis of the record before this court will show that the finding that the NAACP participated in an illegal conspiracy by virtue of the conduct of other defendants to this action as well as by virtue of its own conduct, is strongly supported by the evidence.

In determining whether there was sufficient evidence to establish a cause of action as against the NAACP, it must be determined whether there is evidence that the defendants Law or Jaudon were acting as agents of the NAACP. The evidence showed that Law was President of both the Savannah Branch and of the Georgia State Conference of Branches of the NAACP. (Incidentally, in those capacities, he was in the position of being the chief spokesman and agent for the NAACP in the State of Georgia, and the primary person through whom they would deal with any matters affecting the carrying out of the purposes for which they are organized.) He, by means of the circulars, called a mass meeting of the NAACP and of the Savannah Chapter of the NAACP, in which meeting he and Jaudon participated and led the group in reaching the conclusion that the NAACP would picket the respondent's place of business by inducing customers and

prospective customers to refrain from trading with him; and pursuant thereto, Law selected pickets, placed them at various places around respondent's place of business, picketing himself, and generally directed the picketing (R-53).

"The function of the NAACP", according to the testimony of Law, "is to give aid and assistance to people in the minority group, meaning the Negro group in seeking their rights and protection under the constitution."

In furtherance of that plan, the NAACP acts and operates in Georgia through the Savannah Chapter and other chapters, which compose the Georgia State Conference of Branches of the NAACP. The petition was served upon the NAACP Corporation, the Savannah Branch, and the Georgia State Conference of Branches of the NAACP, by serving Law, as their agent. No plea to the jurisdiction of the court (because they were not properly subject thereto) or traverse of service (because they were not properly served through Law) was filed by the NAACP, but it submitted to the juisdiction of the Court by filing an answer, not made subject to its general demurrer, which alleged that the respondent did not state a cause of action against the NAACP. It also filed a motion to dismiss, predicated upon certain alleged constitutional protections.

In this regard, we think it extremely material to this case that a patently unlawful action had been taken involving mass picketing, a creation of an atmosphere of violence around respondent's premises, an inciting, inflaming, and prejudicing of customers, threats of violence, use by the pickets of vile and vulgar words and names, bricks and rocks were thrown onto the roof of the premises, a pistol shot had been fired from the vicinity of the picket line, and employees of respondent had been threatened with physical violence if they continued to work for respondent.

In a situation such as this, the NAACP was compelled, by law, reason, fairness and common sense, to disavow and repudiate any connection with such occurrences, if, as a matter of fact, they claimed to have none. Instead, they did not desire to do so but, on the contrary, were willing to receive and reap

the benefits which might accrue to them and their movement if such actions had been exonerated in the courts. If they had been successful with the malicious endeavor, they would have been put in position to wreak havoc in communities throughout the nation by establishing themselves as judge and jury and, without investigation or trial, take similar action against any person or persons who incurred their displeasure.

It is high time to challenge the assumption in which too many people have too long acquiesced, that groups that think they have been mistreated have the constitutional right to take the law into their own hands and carry on conduct without regard to the personal rights, property rights, or business rights which other people have and without regard to the total ruin they might cause to another's property, future ambitions, jobs, or lives.

The evidence is undisputed that all was peace and quiet around respondent's place of business until the picketing began and it returned only after the NAACP and the other parties were enjoined from further picketing of the place. As a result of the mass meeting of the Savannah Chapter and the NAACP, the picketing was led by pickets placed on the picket line by Law, they were joined by large numbers of sympathizers or other members of the conspiracy and the presence of the pickets brought about mass picketing, threats, violence, the use of vile, vulgar and indecent language toward respondent, his wife, employees and customers. The picketing was not peaceful, thus unlawful; and it was for an unlawful purpose—punishment of respondent for the alleged commission of a criminal offense, assault and battery.

W. W. Law, the NAACP's top representative in the State of Georgia, and President of both Local Chapter and the State Conference of the NAACP, used the corporate name, NAACP, and held himself out as representing the National Corporation. He acknowledged that the NAACP gave orders and counsel to its local representatives (R-51); the locals were units of and affiliated with the National Organization (R-50); one paying dues to the local organization also became a member of the NAACP; and a portion of the dues went to the NAACP.

ARGUMENT

I. The judgment below in the trial court and the affirmance by the appellate court was fully justified by evidence of NAACP's involvement from inception.

There were ample and sufficient reasons in the record before this court to justify the judgment in the trial court and the affirmance by the Supreme Court of the State of Georgia.

The heading of the circular distributed at the instance of Law showed the meeting to be held as an "NAACP Mass Meeting." The organizational framework of the NAACP, as shown by the testimony of Law as well as the argument of the NAACP in its brief, indicates clearly that the only means by which it can effectively carry out its aims and purposes throughout the country is through local chapters as its instrument. Any attacks on racial discrimination, unfair employment practices with regard to Negroes, or any other methods used by persons indicating their bias or prejudice toward Negroes, would have to originate almost without exception, with action by the local units of the NAACP. It would be difficult to think of a single situation calling for action because of any nefarious scheme, adopted by anyone to deprive the Negroes of their constitutional rights, which could be aptly and effectively handled by the NAACP without the aid and assistance of its local chapters or state conference of chapters. This, then, is the reason why the local chapters are permitted to use and do use the name NAACP in their activities. If the NAACP is not to be held responsible for activities carried out in its behalf by those obviously in position to work for it in the advancing of the aims and purposes for which it exists, then the power, prestige, and force of its name should be strictly circumscribed within the area of activities carried out by it alone and not with the aid of any of its branches.

There can be no doubt that its name is used by the locals because of the powerful and pursuasive effect it can have in dealings and negotiations with third parties and the resulting benefits certainly inure to the advancement of the common cause. If NAACP can never be held liable for actions taken by its locals at a local level, using its name and purporting to

operate for its benefit, unless it has taken specific previous action on a national level authorizing it, then, a fortiorari, it could never be connected legally with any nefarious, unlawful oppressive, and ruinous scheme which damages others as long as they carry out such schemes through the locals, taking advantage of the successful ones and maintaining that it has no responsibility for the unsuccessful one.

We believe the NAACP's responsibility in this regard is analagous to that of an international union. In **United States v. International Union of United Mine Workers, 89 F. Supp. 179,** the court stated at page 181:

> It is recognized by this Court that it has been held that "as long as a union is functioning as a union it must be held responsible for the mass action of its members." **United States vs. International Union, United Mine Workers et al., 77 F Supp. 563, afirmed 177 F 2nd 29, certiorari denied 338 U. S. 871.**

If acts of the nature of the ones committed in the case at bar were to involve and make liable only the locals and leave the NACP free of any concurrent liability, the use by the NAACP of its 1500 branches for such purposes would make it impossible for anyone to continue in business who incurred their displeasure for any reason, whether it be flimsy or substantial, related or totally unrelated to the pursuit of the purposes for which they are organized.

From what source does the major portion of its operating funds come? There would appear to be no doubt that it would come from the receipt of a portion of the dues paid by every member of every local throughout the country. This sharing of dues makes every such local member a member of the NAACP (R-67).

How do members of the locals receive their schooling and training to carry out the means and methods of effective work within the purview of the aims and purposes of their organizations? They are schooled and trained through workshops and discussion groups set up by the national president and directors of the national association and conducted by members of the national staff or leaders from various local units (R-51).

Do they have the same basic aims and purposes in the national organization and the local units? It is a well accepted fact as testified by defendant Law that the aims and purposes of the national and all units thereof are the promotion of the interest of Negroes.

All members of the lesser local groups are members of the greater group and any project carried out on a local level which results in gains and benefits to a local member also advances the general cause.

To substantiate respondent's contention that the action taken against respondent and his business was a conspirational effort of all the appellants to this Court, we refer to the answer given by W. W. Law to a question propounded to him by respondent's attorney. When asked if there had been a conspiracy between himself, and the other defendants, he answered that "there was no thought of conspiracy, none intended. We were engaged in what is normally the kind of protest that we feel necessary to engage in all throughout the Country." (R-66). By the use of the words "we" and "all throughout the country" Law certainly indicated that he spoke not only for the local group but as agent for the national organization because the Savannah Branch would be limited necessarily in its scope and area of operation. It indicates clearly that the actions of the local group were not only sanctioned by the NAACP but were a result of briefing, schooling and counseling by the NAACP. In **Cable Company v. Walker, 127 Ga. 65,** the Court said:

> "The fact of agency may be established by proof of circumstances, apparent, relations, and the conduct of the parties."

In Universalist Convention v. Guest, 179 Ga. 168 (2) 175 SE 466, the Court said: "A claim of agency may be established by circumstantial evidence . . ."

Guilford v. Stacer 53 Ga 619
Bank of the University v. Tuck 96 Ga 456 (23 SE 467)
Walton Guano Co. v. McCall 111 Ga 114 (36 SE 469)
Dibble v. Law 141 Ga 364 (80 SE 999)
Roberts v. Bank of Eufaula 20 Ga App 221 (92 SE 1015)

Sherrod v. Springfield Baptist Church 21 Ga App 200 (93 SE 1009)

Star Furniture Co. v. Dubberly 46 Ga App 178 (167 SE 207)

In **Shamrock Oil and Gas Co. v. Ethridge, 159 F. Supp. 693**, the Court States in headnotes as follows:

Headnote 2—When the facts demonstrate that a corporation is merely alter ego or business conduit of its governing or dominating personality, courts are not hesitant to pierce the corporate veil and look to the ultimate person in order to regard them as one for the purpose of preventing an injustice.

Headnote 3—In order to disregard the corporate entity, it is not necessary that plaintiff prove actual fraud, but it is enough if the recognition of the two entities as separate would result in an injustice.

II. The judgment below in the trial court and the affirmance by the appellate court was fully justified by evidence of the NAACP's ratification and affirmation of acts.

Looking to the record, we find that Law, Jaudon, and the Savannah Branch used the corporate name, NAACP, and held themselves out as representing the national corporation. The national corporation gave orders and counsel to its local representatives at annual conventions; the locals were affiliated with the national organization, and under its corporate charter, were units thereof; one paying dues to the local NAACP also became a member of the national NAACP; members of the local were members of the national NAACP, and a portion of the dues went to the NAACP. These facts evidence that the locals are within the framework of the national organization and are used in the furtherance of the latter's business and interest.

Even if the NAACP did not receive any notice of the acts until Law sent them a copy of the petition filed by respondent, we contend that, because of the strong circumstances

relating it to original involvement in this case, it had the obvious responsibility to show that it did not sanction or agree with what had been done in its name. A petition had been filed alleging that a "NAACP meeting" had been held, at which meeting an unlawful conspiracy had been formed for the sole purpose of picketing respondent's place of business, injuring and damaging his business, and punishing him for the alleged beating of a negro boy who worked for him. They were charged in said petition with the violation of Section 54-801 of the Code of Georgia (Geeorgia Laws 1947, page 620) relating to said pickets having threatened physical harm to the employees of respondent in an attempt to force them to quit the employment of respondent. It had to be apparent to them that there was not and had not been any legitimate controversy between respondent and the organizations and individuals charged with the conspiratorial planning and unlawful picketing. There were no issues relating to racial problems, discrimination because of race, employment disputes, or any other valid reason for the action taken.

The NAACP, at this point, had been informed by said petition that, pursuant to said conspiracy in which it was allegedly involved, there had been mass picketing by use of force, violence, and intimidation, harassment and other like activities, that such picketing was malevolent for the sole purpose of punishing one who was accused of committing an assault and battery upon an employee. It knew that peaceful picketing for a lawful purpose is protected under the free speech provisions of the Constitutions of the United States and of Georgia, but the petition had put them on notice that the picketing as alleged, plus the use of force, intimidation, violence or threats to prevent or attempt to prevent respondent's employees from continuing in his employ, had taken place.

At this point, they were charged with notice that there had never been an investigation by anyone involved in the unlawful conduct to ascertain the true facts surrounding the alleged beating of the negro boy by respondent, and that the parties involved had taken the law into their own hands without any justification whatsoever.

With these facts in hand, the law imposed upon the NAACP the responsibility of disavowing or repudiating the acts which had taken place, subject to a finding that they had ratified and affirmed said acts if they did not so disavow or repudiate.

> The relation of principal and agent arises wherever one person, expressly or by implication, authorized another to act for him, or subsequently ratifies the acts of another in his behalf. **Code of Georgia, Sec 4-101.**

The NAACP never at any time disavowed the agency of Law, Jaudon, or the Savannah Chapter in acting for it in this matter. It was notified of the action by Law. It came into court and defended the case on its merits, contending that a cause of action was not alleged or proven against it.

In the case of **Milkwagon Drivers v. Meadowmoor Dairies, 312 U. S. 297, at page 295,** the Court said:

> The Fourteenth Amendment still leaves the state ample discertion in dealing with manifestations of force in the settlement of industrial conflicts. And in exercising its power a state is not to be treated as though the technicalities of the laws of agency were written into the constitution. Certainly a state is not confined by the constitution to narrower limits in fashioning remedies for dealing with industrial disputes than the scope of discretion open to the National Labor Relations Board. It is true of a union as of an employer that it may be responsible for acts which it had not expressly authorized or which might not be attributable to it on strict application of the rules of respondent superior.

Citing: **International Asso. M.T.D.M.L. v. National Labor Relations Board, 311 U. S. 72; H. J. Heinz Co. v. National Labor Relations Board 311, U. S. 514.**

If Law originally acted without authority and assumed to act for the NAACP without authority, it had the option to repudiate or ratify the fact, but was required, under the unusual circumstances of this case, to do one or the other.

It is not requisite to the ratification of an unauthorized act of one assuming to act as agent of another that the acquiescence should be in express terms. In most cases such a ratification can be implied from the acts and conduct of the principal. As a general rule, if the principal, with full knowledge of the material facts, accepts and retains the benefits of the unauthorized act, he thereby ratifies the act. **Liberty Mutual Insurance Company v. Lipscomb, 56 Ga. App 15.**

Where, as in the case at bar, the NAACP never made an investigation of the matter to ascertain anything whatsoever about it but was thoroughly appraised by the petition of the unlawful conspiracy and unlawful acts, and it never repudiated the acts, being perfectly willing to sit by and receive whatever benefits the unlawful acts done would achieve in the general advancement of its cause, it is deemed to have affirmed them. See **Mechem, Outlines of Agency (3rd Ed), p. 94, Sec. 152: Southern Motors of Savannah v. Krieger, 86 Ga. App. 574 (71 SE 2nd 884); Haney School Furn. Co. v. Hightower Baptist Institute, 113 Ga. 289 (2) (38 SE 761); Glisson v. Burkhalter, 31 Ga. App. 365 (4) (120 SE 664).**

Section 219 of the Restatement of the Law Second, Agency 2nd, at Page 481, the discussion of "When Master is Liable for Torts of his Servant" shows the following: "Subsection (2) (d)—"The Servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relationship." Clause (d) explains that this "includes primarily situations in which the principal's liability is based upon conduct which is within the apparent authority of a servant, as where one purports to speak for his employer in defaming another or interfering with another's business."

The NAACP in the instant case permits, with impunity, the use of its corporate name by others, knowing the full force and impact on the Negroes in the community that such involvement in a matter by the national organization would

have. Those who would not normally respond to a call from a local chapter would consider a call from the national organization imperative.

The NAACP in its brief admits that the New York Corporation can neither function nor carry out the purposes for which the organization was created without its branches and that the destruction or impairment of its branches effects a mortal blow to the parent organization whose existence is posited on the eradication of racial prejudice in all areas of this country and the securing of equal rights for Negroes as individuals. They say that survival or insulation of the national corporation sans local units defeats the purpose of the organizations. Naturally, their argument goes to the contention that neither they nor their agents, nor their locals, should ever be held responsible for any tortious conduct, however reprehensible or ruinous to others. We are sure that this illogical conclusion has never received meritorious treatment by any court but it appears to me that it amply demonstrates good and sufficient reasons why the NAACP should be held responsible for its conduct in this case. It shows that the NAACP and its locals are so inextricably enmeshed and intertwined in aims, purposes, and functions that to insulate the national organization from any blame for acts done by others in its behalf goes contrary to the facts of life or principles of law.

The NAACP, on Page 28 of its brief, says that state action effectuated through judicial fiat purposed to remove local "Civil rights agitators," is sought to be accomplished by striking at the local units. This specious argument infers, without any justification anywhere in the record or anywhere in the case, that race relations or civil rights considerations were involved in this case. There is not one iota of merit in such inference. The case was fairly tried by the jury, the jury being properly charged by the trial judge, and no one could fairly or reasonably be surprised that, under the evidence properly introduced in the case and which so strongly showed the aggravated and meretricious conduct on the part of the defendants which led to the ruin of respondent's business, the jury returned the verdict that they did.

The trial jury were fully justified in finding the NAACP a party to the conspiracy and illegal picketing. In the **Restatement of the Law Second, Agency 2nd, Chapter 4, Page 232,** it is written: "Knowledge by the purported principal can be inferred as in other cases; where he has such information that a person of ordinary intelligence would infer the existence of the facts in question, the triers of fact ordinarily would find that he had knowledge of such facts."

In the **Restatement of the Law Second, Agency 2d, Sec. 94, at Page 244,** a Comment recites the following: "Silence under such circumstances that, according to the ordinary experience and habits of men, one would naturally be expected to speak if he did not consent, is evidence from which assent can be inferred. Such inference may be made although the purported principal had no knowledge that the other party would rely upon the supposed authority of the agent; his knowledge of such fact, however, coupled with his silence, would ordinarily justify an inference of assent by him. Whether or not such inference is to be drawn is a question for the jury, unless the case is so clear that reasonable men could come to but one conclusion."

With regard to acquiescence by a principal in an unauthorized transaction by his agent,, the case of **Glisson v. Burkhalter, supra 31 Ga. App 365,** says:

> While such an unauthorized transaction by an agent may be validated by the principal, and ratification will result by operation of law from the principal's acquiescence therein for an unreasonable length of time after notice, yet what is a reasonable time is ordinarily a question for the jury.

We respectfully contend that petitioner National Association for Advancement of Colored People, a New York Corporation, has not been deprived of its property without due process of law under the Fourteenth Amendment to the United States Constitution by being held liable in damages in this case, and that the Court's refusal to grant certiorari

as to the Savannah Branch, NAACP, W. W. Law and Rev. F. D. Jaudon was violative in no particular whatsoever of such parties' guarantees under the Fourteenth Amendment.

CONCLUSION

Wherefore, for the reason hereinabove stated, it is respectfully submitted that this Court should affirm the judgment below as to petitioner and should not review, as to the Savannah Branch, NAACP, W. W. Law and Rev. F. D. Jaudon, the judgment below.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,
Petitioner,

against

HALDRED OVERSTREET

PETITION FOR REHEARING

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No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

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PETITION FOR REHEARING

Petitioner respectfully petitions this Court for rehearing of its decision of April 27, 1966, dismissing the petition for writ of certiorari as being improvidently granted. Mr. Justice Douglas dissented and was joined by the Chief Justice, Mr. Justice Brennan and Mr. Justice Fortas (*NAACP* v. *Overstreet*, — U. S. —, 34 L. W. 3374).

Reasons for Allowance of This Petition

1. The broad implications of this Court's dismissal of the writ of certiorari have become strikingly manifest in the brief period since that decision was handed down on April 27th past. At this writing, petitioner has already been joined as party defendant with its local branch in another civil action involving a factual situation similar to that of the case at bar. The claimed damage matured in September, 1965, but the action was filed on May 1, 1966. Moreover, petitioner is threatened with joinder as a defendant in a similar action in Philadelphia, Pennsylvania, in which its local branch is already involved.

If, in less than a month, petitioner has already incurred the onerous obligation of defending two such actions involving activities of its local branches, the course of future events is not difficult to anticipate. The implications of the immediacy with which these actions arose after the dismissal by this Court of the writ of certiorari in this case are inescapable. Persons throughout the country antagonistic to the work and goals of petitioner have seen and will continue to see in this Court's action in this cause yet another device with which petitioner and its affiliate branches may be harassed and their work—and indeed that of the entire civil rights movement—impeded, if not completely halted. As Mr. Justice Black noted in his concurring opinion in *New York Times* v. *Sullivan*, 376 U. S. 254, 295:

> Moreover, this technique for harassing and punishing a free press—now that it has been shown to be possible—is by no means limited to cases with racial overtones.

Similarly, use of civil process to stultify the activities of other groups, advocating and working on causes unpopular in some circles, is a likely possibility in the future.

The eventual outcome of the civil litigation now pending against petitioner, or apt to arise in the future, is not the issue. Even if ultimately unsuccessful, any suit in which civil judgments are sought from petitioner must be vigorously contested at every level in its course through the state court. Petitioner's experience in the Georgia courts in the instant case, which this Court has left undisturbed, clearly does not warrant an assumption that even spurious claims will be unsuccessful at the state level.

Local branches, heretofore charged under their charters with independently attempting to eliminate racial discrimination and prejudice at the local level through legal means, can no longer assume that their activties of peaceful pro-

test will not subject them, their officers and the national organization to suits for damages. Under the Georgia courts' decisions petitioner will be required to undertake an impossible financial and structural burden which, as a practical matter, would drain all the personnel and funds of the local affiliates and national organization and vitiate any possibility of petitioner continuing its true function of formulating and expressing the broad policies and platforms which the local groups carry out in the context of their local problems.

> These freedoms [First Amendment protection of freedom of association] . . . are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual applications of sanctions.[1]

Thus, this Court's apparent reluctance to discern a federal question requiring review of the issues presented in the case at bar has, however unintentionally, supplied both private litigants and eventually state juries hostile to the aims of petitioner with yet another potent weapon with which to destroy it, or certainly diminish its effectiveness as an organ of peaceful protest against racial discrimination. If the Court leaves untouched what at best can be described as the ambiguous legal standards and inadequate supporting evidence which the Georgia courts utilized to find the requisite agency relationship between petitioner and its local branch, it will not require very astute legal analysis for petitioner's antagonists throughout the country to formulate causes of action ostensibly grounded in areas of purely local state law to harass, impoverish and eventually paralyze petitioner.

> Today a judgment of more than $80,000 is fastened on the national NAACP. Juries hostile to the aims of an organization in the educational or political field, unless carefully confined by meticulous

[1] NAACP v. Button, 371 U. S. 415, 433.

> instructions and judicial supervision, can deliver crushing verdicts that may stifle organized dissent from the views and policies accepted by the majority. (Mr. Justice Douglas' dissenting opinion, *NAACP* v. *Overstreet*, — U. S. —, 34 L. W. 3374, 3375.)

That this Court, or indeed various state courts, may not ultimately permit such transparent transmutation of local law to destroy petitioner's rights under the First Amendment does not answer petitioner's contention that the time to stop such a trend is now, and not in the future. Petitioner's resources both in personnel and funds clearly cannot long support the onus of being required to defend such litigation, nor the burden of paying staggering damage awards of the nature here imposed.

Moreover, the mere existence of the threat that civil process is now available as a means for attacking petitioner's work cannot help but constrain the very formulation of its future programs. The trend of federal legislation and this Court's own decisions in recent years have required those dedicated to restricting Negroes from attaining their full rights as citizens to become less blatant in their techniques. As a consequence, organizations such as petitioner, which are pledged to the complete eradication of racial prejudice and to securing for Negroes complete equality before law in all aspects of society, must meet these more subtle, but no less deleterious, attempts by new and novel approaches. Although such approaches will continue to be within the legal framework petitioner has always utilized, here, although there is no evidence that petitioner sanctioned anything other than peaceful protest, it is held liable under Georgia law and this Court finds no federal issues involved. Petitioner, therefore, does not know what future activity of its local affiliates may be held its responsibility. The debilitating effect on petitioner's effective functioning of potential civil actions for damages which may be held its responsibility, cannot be minimized.

2. a. Mr. Justice Douglas has recited this Court's previous record in striking down indirect methods of frustrating the functioning of petitioner or similar political organizations. He has also cogently pointed out the unclear standards used by the courts below and the paucity of the record which resulted in a finding of agency between the national corporation and the local branch.

> To equate the liability of the national organization with that of the Branch in the absence of any proof that the national authorized or ratified the misconduct in question could ultimately destroy it. The rights of political association are fragile enough without adding the additional threat of destruction by lawsuit. We have not been slow to recognize that the protection of the First Amendment bars subtle as well as obvious devices by which political association might be stifled. . . . (dissent 34 L. W. at 3375)

While this Court has always been careful to honor the sanctity of state courts' interpretations of local law, it has not hesitated to examine carefully the record of cases involving such interpretations where their effect has been to threaten the constitutional rights of one of the parties.

> . . . it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. *Milk Wagon Drivers* v. *Meadowmoor Dairies*, 312 U. S. 287, 293.

Petitioner's argument does not require this Court to replace the state courts' findings as to evidentiary sufficiency or to formulate its own standards of agency. It asks only that the Court exercise its power and indeed assume its long accepted obligation to review the evidentiary facts to assess their "*constitutional* sufficiency" where, as a result of the state court's application of state 'law,' petitioner's rights under the First Amendment have been sub-

stantially impaired. Under such a scrutiny, petitioner submits, the record in the instant case "lacks the convincing clarity which the constitutional standard demands." *New York Times* v. *Sullivan*, 376 U. S. 254, 285-286.

b. As petitioner sought to show in its principal brief, a finding of agency between petitioner and its local branch was made possible by the trial court through a confusing intermingling of the laws of conspiracy and agency. This Court only recently has been confronted by a similarly unwarranted extension of the conspiracy doctrine under which a national union was held responsible in damages for the illegal acts of its local. In *United Mine Workers Union* v. *Gibbs*, — U. S. —, 16 L ed 2d 218, the Court found that the tort of conspiracy had been employed to hold the national union liable for its local's activities without any showing that the national had authority to stop the illegality, had participated in it or had ratified it. In absolving the national body of responsibility, absent any such showing, Mr. Justice Brennan pointed out at pages 231-232:

> Indeed, a reading of the record in this case gives the impression that the notion of "conspiracy" was employed here to expand the application of state laws substantially beyond the limits to be observed in showing direct union involvement in violence.

The facts in the case at bar are remarkably similar. As Mr. Justice Douglas observed, there is nothing in the record below to show knowledge, authorization or ratification of the branch's alleged misconduct by the national corporation. Rather, the Georgia courts found petitioner's liability solely through its participation in a "conspiracy" with its branch. The evidence of its involvement in the conspiracy consisted only of its affiliation with its local through dues sharing, national conventions, dual membership in local and national organizations and annual reports on local activities by the branch to the national corporation. At the most, this evidence show a "loose relationship be-

tween petitioner and this independently controlled Branch'' (dissent, 34 L. W. at 3375)

> . . . the First Amendment, which commands vigilance lest the rights it assures be denied the ''breathing space'' (*NAACP* v. *Button, supra,* 433) necessary for survival, provides guidance. In my view, it forbids the imposition of liability on a national political association on account of the misconduct of a local branch without proof that the national organization specifically authorized or ratified the conduct for which liability is sought to be imposed. A *general* finding of ''agency'' or ''affiliation'' is not enough . . . (34 L. W. at 3375).

c. When the entire record of the proceedings below is analyzed, it can be seen that the liability of the local branch —upon which the national's liability is ultimately based— is equally flimsy vis-a-vis the local branch's relationship with those directly responsible for respondent's injuries. When this Court limited its grant of certiorari in the first instance to the question of whether petitioner had been ''deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control'', on first blush it appeared to have precluded itself from assessing the even broader constitutional implications of allowing the state courts' decision to stand. However, a liberal interpretation of the words ''persons beyond its control'' certainly could allow this Court to explore the evidence adduced pertaining to the acts of violence and the identity of their perpetrators. The record is replete with instances in which legal responsibility was affixed on the branch (and, as a result of this Court's dismissal of certiorari, ultimately on petitioner) for acts of persons identified only as ''colored'' and in no other way connected with either petitioner or its branch (see, *e.g.,* pp. 193, 202-3, 266, 275, 319-323, 333, 364-365, 367-368, 404-405 of the record of entire proceedings below, on file with this

Court). The general atmosphere created by admission of such testimony which ultimately led to a damage award far out of proportion to respondent's injuries (the satisfaction of which petitioner, for all practical purposes, bears the entire burden) supports an inference similar to that noted by Mr. Justice Black in *New York Times* v. *Sullivan, supra,* at pp. 294, 295, where he found the size of the verdict in the absence of a showing of pecuniary harm to the plaintiff could well have been based on hostility toward the ideas expressed in the newspaper advertisements.

By dismissing the writ of certiorari, this Court has left petitioner in an anomalous position: previously protected by this Court from various subtle as well as obvious devices by which its rights under the First Amendment have been threatened or stifled, it is now faced with yet another technique capable of destroying its effectiveness. "Labeling" of its relationship with its branch as one of "agency" has been permitted to support an exorbitant damage award in this case. In light of developments since the dismissal of the cause, petitioner is threatened with similar awards in the future, although such labeling is, in the context of the proceedings below, but a shallow subterfuge for thwarting petitioner from effectively functioning and exercising those constitutional rights which this Court heretofore has so forthrightly protected.

3. Petitioner asserted to this Court in its brief in chief and in oral argument that the judgment against its local affiliate and officers meant in essence that the national organization would have to assume that obligation. That would have been, however, a moral obligation only, had the Court decided this case in petitioner's favor. Now, it is a legal obligation. In the former case, petitioner could have negotiated with respondent to accept a settlement reasonably consistent with the practical realities of the size of the assets of the Savannah Branch and the individual defendants. Now, however, petitioner is in no such bargaining position.

Petitioner is not a wealthy organization; indeed as of April 30, 1966, it had an accumulated deficit of $112,899.60 and the issue of its basic survival has been very much in doubt unless its financial situation materially improves.

With this decision, however, the prospect of petitioner's economic recovery becomes more tentative. It would be ironic indeed if this Court which gave constitutional sanction to the NAACP and to the whole civil rights and civil liberties movement in *NAACP* v. *Alabama*, 357 U. S. 449, and cognate cases, should be responsible for the stifling of organized peaceful protest which it so carefully protected heretofore.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that this petition for rehearing should be granted, and verifies that this petition is not being filed for purposes of delay.

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IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

against

HALDRED OVERSTREET.

Certificate of Counsel

I, BARBARA A. MORRIS, do hereby certify that I am counsel for petitioner herein and that this petition for rehearing is presented in good faith and not for delay.

BARBARA A. MORRIS

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SUPREME COURT OF THE UNITED STATES

No. 505.—October Term, 1965.

National Association for the Advancement of Colored People et al., Petitioners, *v.* Haldred Overstreet.	On Writ of Certiorari to the Supreme Court of the State of Georgia.

[April 27, 1966.]

Per Curiam.

The writ of certiorari is dismissed as improvidently granted.

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SUPREME COURT OF THE UNITED STATES

No. 505.—October Term, 1965.

National Association for the Advancement of Colored People et al., Petitioners, *v.* Haldred Overstreet. | On Writ of Certiorari to the Supreme Court of the State of Georgia.

[April 27, 1966.]

Mr. Justice Douglas, with whom The Chief Justice, Mr. Justice Brennan and Mr. Justice Fortas concur, dissenting.

In May 1962, a 14-year-old Negro boy complained to his school principal and to his mother that he had been mistreated by respondent. The boy claimed that respondent, the owner of a market at which the boy was employed, had accused him of stealing merchandise and had thereafter slapped and kicked him. The truth of this charge remains disputed. The boy's mother, dissatisfied with the response of the local police, contacted the Savannah Branch of the National Association for the Advancement of Colored People. The Branch responded by organizing a campaign to withhold patronage from respondent. Pickets were established, and customers were asked to refrain from shopping in the market. Although the record does not contain any evidence of misconduct on the part of the Branch's members or officers, the picketing apparently attracted substantial crowds. There were incidents involving the intimidation of customers, blocking of sidewalks, and scattered incidents of violence. The trial judge instructed the jury that they might hold the Branch responsible for the respondent's damages if they found that the picketing was the "proximate cause" of the

misconduct of others.[1] The judge further instructed the jury that should it hold the Branch liable, it might also hold petitioner—the national NAACP—if the Branch were found to be its "agent." The jury held both the Branch and petitioner liable. Damages totaling $85,793 were assessed: this figure includes $50,000 in punitive damages. The Georgia Supreme Court affirmed, — Ga. —, and we granted certiorari, limited to the question of whether holding petitioner, the national organization, liable "for acts performed without its knowledge and by persons beyond its control" denied it rights secured by the Fourteenth Amendment. 382 U. S. 937.

Respondent has suffered economic loss as a result of the conduct of those who blocked his sidewalk and threatened his customers. I assume that nothing in the Constitution bars recovery for his injuries from those individuals. See *Giboney* v. *Empire Storage Co.*, 336 U. S. 490. The courts below found that the Branch was responsible for these injuries, and no questions as to that aspect of the case are now before us. We have only the question whether, given the liability of the Branch, petitioner, the national NAACP may be held responsible for respondent's loss—and for the punitive damages imposed.

The amended complaint alleged that W. W. Law, an officer of the Branch, "in using such tactics was acting in and for the services" of petitioner "as its agent, employee, and servant, within the scope of said agency, employment and service." That allegation was denied by petitioner and the record does not contain one iota

[1] "I charge you that in this case you can consider the effect of the picket[ing]. Did . . . the fact that the pickets were there incite activity upon people who were not at all connected with the organization[?]; and if that was incited by the pickets, *by their mere presence*, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted." (Emphasis added.)

of proof that petitioner controlled, authorized, or even knew of these activities.

Petitioner is a nonprofit corporation organized in New York for the purpose of promoting equality of treatment for Negro citizens.[2] The Branch is concededly an affiliate of that national organization. A portion of the dues it collects are forwarded to the national, and members of the local branch are automatically members of the national organization. Members of the local association can and do attend the annual national convention at which they participate in workshops and discussions relating to NAACP activities. The Branch makes an annual report of its activities to the national NAACP.

That, for all the record shows, is the full extent of the relations between petitioner and the Branch. There is no evidence of any power on the part of petitioner to control the conduct of the Branch. There is no evidence of any effort in past years by petitioner to exercise such control. The Branch officers were not, for all the record shows, national officers. The petitioner did not order the demonstrations nor did it authorize them. The record affirmatively shows that petitioner had no knowledge of the demonstrations against respondent and did not learn of them until they were sent the restraining order that was served upon the Branch president. And nothing in the record suggests "ratification"—even by inaction over a sustained period—of the local's activities against respondent or of similar activities.

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[2] See *NAACP* v. *Alabama*, 357 U. S. 449, 451–452. Its certificate of incorporation states that its principal objectives are "voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law." *Ibid.*

The standards by which the trial court allowed this "agency" to be measured were, to say the least, unclear. The trial judge instructed the jury that the petitioner was a New York corporation which could "only be represented in Georgia by agents, and the agents must conduct themselves in a manner that is compatible with the purposes of that organization." He then instructed as follows:

> "Now did the National Association for the Advancement of Colored People have an agent in Savannah? Who was that agent? Was it W. W. Law [the Branch's president]? . . . Is that National Association responsible for what the affiliate does? . . . Are they so connected that one is responsible for the act of the other by reason of the agency; by reason of their concerted activities as expressed in this conspiracy? *As the Court sees it, you can't get agency and conspiracy separated in this case.* A corporation may be a member of a conspiracy if its officers and agents take part in it and it furthers the conspiracy. You look to the evidence and see if it preponderates as to these organizations. Was there an agency that bound the National Association . . . ? Did they participate through their agents and members and people who had a right to bind them in this conspiracy?" (Emphasis added.)

These instructions, to which the defendants excepted and assigned as error on appeal, gave the jury little guidance as to the circumstances in which it would be appropriate to hold liable the national NAACP. The remarks of the trial judge in considering petitioner's motion for a nonsuit are, in this respect, revealing: "[S]o far as the evidence is concerned, there [is] no evidence to the effect that any member [of the Branch] was the agent

of the national corporation. *In other words they were just affiliated.*" (Emphasis added.)

To equate the liability of the national organization with that of the Branch in the absence of any proof that the national authorized or ratified the misconduct in question could ultimately destroy it. The rights of political association are fragile enough without adding the additional threat of destruction by lawsuit. We have not been slow to recognize that the protection of the First Amendment bars subtle as well as obvious devices by which political association might be stifled. See *Bates* v. *Little Rock*, 361 U. S. 516, 523. Thus we have held that forced disclosure of one's political associations is, at least in the absence of a compelling state interest, inconsistent with the First Amendment's guaranty of associational privacy. *E. g., DeGregory* v. *New Hampshire*, — U. S. —; *Gibson* v. *Florida Legislative Comm.*, 372 U. S. 539, 543–546; *Shelton* v. *Tucker*, 364 U. S. 479; *NAACP* v. *Alabama*, 357 U. S. 449, 462–463. Recognizing that guilt by association is a philosophy alien to the traditions of a free society (see *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 245–246) and the First Amendment itself, we have held that civil or criminal disabilities may not be imposed on one who joins an organization which has among its purposes the violent overthrow of the Government, unless the individual joins knowing of the organization's illegal purposes (*Wieman* v. *Updegraff*, 344 U. S. 183) and with the specific intention to further those purposes. See *Elfbrandt* v. *Russell*, — U. S. —; *Aptheker* v. *Secretary of State*, 378 U. S. 500.

The present case contains no less a threat to political association. That the threat comes in the form of civil suits for damages rather than that of direct governmental restraints is of no consequence as we noted in *New York*

Times v. *Sullivan*, 376 U. S. 254, 265. Today a judgment of more than $80,000 is fastened on the national NAACP. Juries hostile to the aims of an organization in the educational or political field, unless carefully confined by meticulous instructions and judicial supervision, can deliver crushing verdicts that may stifle organized dissent from the views and policies accepted by the majority.

This case thus carries us into territory in which principles of state law must be accommodated with overriding federal precepts. The law of agency which a State chooses to follow functions, for the most part, free of constitutional restraint; in our federal system, each State may regulate the relations between principal, agent, and third parties according to its own standards of fairness and sound policy. But when a state policy thwarts interests which the Federal Constitution affords special protection, that state policy must yield. For example, though state law customarily determines whether a particular contract is enforceable, notwithstanding the applicable commercial law a state court may not enforce covenants restricting sale of real property to non-whites. *Shelley* v. *Kraemer*, 334 U. S. 1. While the States may preserve order on the public streets and punish conduct constituting a "breach of the peace" as defined by local law, peaceful expression may not, regardless of the label put upon it, be punished. *Cantwell* v. *Connecticut*, 310 U. S. 296. And see *Edwards* v. *South Carolina*, 372 U. S. 229. Questions of legislative apportionment, though primarily matters of state law, must be resolved in compliance with the Federal Equal Protection Clause. *Reynolds* v. *Sims*, 377 U. S. 533. The same is true of voter registration, *Harper* v. *Virginia State Board of Elections*, — U. S. —. State regulation of the practice of law—more specifically, the rules regarding solicitation of legal business—must yield in favor of the First Amendment

right to join together in a common effort to assert legal rights. *NAACP* v. *Button*, 371 U. S. 415; *Railroad Trainmen* v. *Virginia Bar*, 377 U. S. 1.

In *NAACP* v. *Button*, *supra*, we rejected the State's claim that "solicitation" of legal business is outside the area of freedoms protected by the First Amendment. We said that "a State cannot foreclose the exercise of constitutional rights by mere labels." 371 U. S., at 429. So it should be in this case. Terms such as "agency" and "affiliation" have no talismanic significance. In the context of this case, they obscure rather than promote sound analysis. The question we must answer is whether a national political association can be held reponsible for wrongs committed by those beyond its control in a constitutional system where freedom of expression and association is treasured.

The threats which political organizations of this kind today face were once a great burden on labor unions.[3] Congress acted to relieve that burden by enacting § 6 of the Norris-LaGuardia Act:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

See *Brotherhood of Carpenters* v. *United States*, 330 U. S. 395. We recently held in *United Mine Workers* v. *Gibbs*,

[3] The burdens of civil suits for damages were felt by the trade union movement in Great Britain as well as in this country. See Webb, Sidney and Beatrice, The History of Trade Unionism, 597–604 (1965 ed.); Cole, The British Working Class Movement, 292–296 (1948).

— U. S. —, that an international union could not be held liable for the tortious conduct of a local in the absence of "clear proof" of "participation, authorization, or ratification" by the international union.

We have of course no like statute here. But the First Amendment, which commands vigilance lest the rights it assures be denied the "breathing space" (*NAACP* v. *Button, supra,* 433) necessary for survival, provides guidance. In my view, it forbids the imposition of liability on a national political association on account of the misconduct of a local branch without proof that the national organization specifically authorized or ratified the conduct for which liability is sought to be imposed. A *general* finding of "agency" or "affiliation" is not enough.[4] In the present case, the record discloses

[4] The factors on which the Georgia Supreme Court relied to sustain the finding of "agency" fall far short of showing any specific authorization by petitioner to the Savannah Branch to engage in the conduct condemned below. It emphasized the following points: (1) both the local and the national organizations use the name "N. A. A. C. P."; (2) the petition was served on the Branch president as petitioner's agent, and petitioner made no objection; (3) the Savannah Branch and petitioner shared certain common objectives; (4) members of the Branch were automatically members of the petitioner and a portion of their dues were forwarded to New York; and (5) at national conventions, members of the local were counseled in methods of furthering their efforts in the local district through discussions and workshops. In addition, the court suggested that if there was in fact no agency relation, petitioner "had the option to repudiate or ratify the act, but [it] was required to do one or the other. And where, as here, [it] never repudiated the act, [it is] deemed to have affirmed it."

The record is clear that the first notice petitioner had of the Savannah demonstrations was when the summons was forwarded to it in New York. By this time, a temporary restraining order was in effect. There was, therefore, no opportunity for petitioner to exercise a moderating influence on the local branch. Compare *United Mine Workers* v. *Gibbs, supra,* where the national union had knowledge of the local's violent conduct and never expressly

at most a loose relationship between petitioner and this independently controlled Branch. This record discloses no specific authorization or ratification by petitioner of the acts which the Georgia courts found tortious. Nor is there any evidence of any participation by petitioner in such conduct. The trial judge himself stated that there was no "agency" shown, but only an "affiliation" between petitioner and the local Branch. So weak a link cannot, for the reasons I have stated, warrant holding the national NAACP responsible for the damages sustained.

I would reverse this judgment.

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disavowed it; we held, nonetheless, that there had been no ratification although we noted that had it made some public statements condemning the violence "our result would undoubtedly be firmer." *Id.*, at —. Moreover, petitioner specifically denied respondent's allegations of agency in its answer filed shortly after the suit was begun.

The more demanding requirements of proof which I believe must be met would be satisfied, for example, in a case where the Branch incurred some liability arising out of its collection of dues. I would expect that since the dues paid to the Savannah Branch are, in part, collected on behalf of the national organization, it would be a simple matter to show specific authority to engage in that activity. Perhaps it might be possible to show specific authorization to engage in the conduct involved in this case; the record does not, for example, show what manner of advice and counsel is given the Branch at national conventions. Whether respondent could meet his burden of proof cannot, of course, be determined from the meager record before us.

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